IN THE SUPREME COURT OF THE UNITED STATES

October Term 1975

No. 75-877

JULIO ALONSO,

Petitioner,

vs.

STATE OF CALIFORNIA DEPARTMENT OF HUMAN RESOURCES AND STATE OF CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

The Petitioner Julio Alonso respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Supreme Court of California entered on September 24, 1975.

OPINION BELOW

The opinion of the Court of Appeal for the Second Appellate District of the State of California appears in the Appendix hereto. No opinion was rendered by the Supreme Court of California.

JURISDICTION

The decision of the Supreme Court of California denying the Petitioner's Petition for Hearing was entered on September 24, 1975. This Petition for Certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. Sec.1257(3).

QUESTIONS PRESENTED

1. Whether, in view of the fact that there is no valid law either federal or state prohibiting the hiring of an undocumented alien, the Petitioner in applying for Unemployment Insurance benefits met all the eligibility requirements imposed by Section 1253(c) of the Unemployment Insurance Code of California.

2. Whether the Federal Government has preempted the field of immigration law enforcement.

3. Whether the respondents have the authority to create policies that affect the civil, legal, human and economic rights of individuals that go beyond the specific language, requirements, and legislative intent of existing statutes to the detriment of the traditional tri-separation of powers.

4. Whether the respondents acted unconstitutionally in suspending "equal protection of the law" and "due process" in determining the Petitioner's claim for benefits.

5. Whether the action of the respondents in requiring a certain segment of California applicants for unemployment insurance benefits, as a prerequisite for such benefits, to present documentation or otherwise explain their immigration status, while not requiring others to do so is unconstitutional.

STATUTORY PROVISIONS INVOLVED

California Unemployment Insurance Code Section 1253(c):

> "An unemployed individual is eligible to receive unemployment compensation benefits with respect to any week only if the director finds that he was able to work and available for work that week."

California Unemployment Insurance Code Section 100:

> "The legislature therefore declares that in its considered judgment the public good and the general welfare of the citizens of the State require the enactment of this measure under the police power of the State, for the compulsory setting aside of funds to be used for a system of unemployment insurance providing benefits for persons unemployed through no fault of their own, and to reduce involuntary unemployment and the suffering caused thereby to a minimum."

STATEMENT OF THE CASE

This case eminates from an appeal by Petitioner from a judgment entered by the Superior Court of the County of Los Angeles, State of California, denying Petitioner's Petition for a Writ of Mandate and Judicial Review.

The Petitioner was an applicant applying to the respondents, State of California Department of Human Resources Development and Unemployment Insurance Appeals for unemployment insurance benefits. The Petitioner made his application for benefits and was denied said benefits on the basis that he was "unavailable for work." The Petitioner met the established

legal criterion of "available for work" and had established a valid fund as a result of past employment. However, the Petitioner was classified and categorized as "unavailable for work" and denied benefits solely on the basis of his refusal to show his "immigration card" to agents and employees of the Department of Human Resources Development, as hereinafter explained.

In making his application to the respondents, the Petitioner stated that he was unemployed, but, was ready, willing and able to accept employment. The Petitioner did not qualify his willingness to accept employment, nor did he impose any special conditions. On or about September 24, 1972, at the Department of Human Resources Development office in Los Angeles, California, the Petitioner, as a prerequisite to qualifying for benefits, was asked by the respondents to present his immigration "green card." The respondents represented to the Petitioner that he could not qualify for benefits unless he presented his Immigration Card. The Petitioner represented to the respondents that he had lost his "immigration card," but gave the respondents his alien registration number A 11-948-056.

The Petitioner was denied benefits on the basis of not being "available for work" as a result of not presenting his immigration card. The Petitioner therefore requested a hearing with the Unemployment Insurance Appeals Board.

On or about November 16, 1973, a hearing was held by the respondents for the purposes of

determining whether or not the Petitioner was entitled to unemployment insurance benefits. At the hearing the respondents asked the Petitioner to present documentation to show that he was a legal resident as a prerequisite to being classified as "available for work." The Petitioner refused to present any documentation on the basis that he had already complied with the requirements of the Department of Immigration and Naturalization in becoming a permanent legal resident and that he already met the established criterion and definition of "available for work," pursuant to Section 1253(c), Article 1, of the Unemployment Insurance Code, and that the information requested was therefore irrelevant. The hearing referee in decision Number LA-18890 denied his claim for benefits on the basis that he was "available for work."

The Petitioner, subsequent to the referee's decision, made a timely appeal to the respondent Unemployment Insurance Appeals Board. On or about June 5, 1973, the respondents issued a decision upholding the referee's decision by a three to two majority in Precedent Benefits Decision Number PB 153, case Number 72-8624. The Appeals Board cited in its reasons for its decision that the failure or refusal of the claimant to present documentary evidence of his immigration status made him "unavailable for work" pursuant to subdivision (c) of Section 1253 of the Unemployment Insurance Code. The majority also cited public policy as a basis for their decision and held that the Petitioner was not entitled to "due process" nor "equal protection

of the law."

The dissenting members of the Board in their dissenting opinion on page 2, paragraph 3 of the Board's decision, summarize the evidence as follows:

> "There is no evidence in this case and the majority opinion bases no finding that the claimant has imposed any restrictions as suitable work as to hours, days, shifts or wages, nor does it appear that he has restricted the kinds of work he will accept or the distance he will travel in order to accept work. His is in the same labor market area as he was at the time he earned his wage credits upon which his present claims for benefits is founded. If employers are reluctant to hire persons who are unwilling or unable to produce a registration card, the evidence does not show it. In other words, the claimant meets an established definition of availability in that he is ready, willing, and able to accept suitable employment in a labor market and has imposed no restrictions on suitable work which would reduce his possibilities of obtaining employment. Thus, there is no basis in the record for a denial of benefits 'under subdivision (c) of Section 1253 of the Code.'"

As a result of the respondents' denial of his appeal the Petitioner filed a Petition for Writ of Mandate, with the Superior Court for the County of Los Angeles, seeking Judicial Review of the respondents' final administrative decision. The Superior Court upheld the decision of the Appeals Board and denied the relief sought by the Petitioner.

Subsequent to the Superior Court's decision, the Petitioner filed an appeal with the Court of Appeal for the Second Appellate District of California. The Court of Appeal, in a 2 to 1 decision affirmed the decision of the Superior Court on the grounds that: (1) the Petitioner was unavailable for work pursuant to Section 1253(c), (2) that the federal government had not preempted the field of immigration law enforcement with regard to Petitioner's claim for benefits, (3) that public policy was a major consideration.

The Petitioner petitioned the Supreme Court of California for a rehearing of his case but said request was denied. The Supreme Court rendered no opinion in its decision of denial.

REASONS FOR GRANTING THE WRIT

I

THE PETITIONER, IN APPLYING FOR UNEMPLOYMENT INSURANCE BENEFITS, MET ALL THE ELIGIBILITY REQUIREMENTS IMPOSED BY SECTION 1253(c) OF THE UNEMPLOYMENT INSURANCE CODE AND THE DECISION BELOW CONFLICTS WITH THE DECISIONS OF THE COURT OF APPEAL AND THE SUPREME COURT WITH REGARD TO FEDERAL PREEMPTION OF IMMIGRATION AND NATURALIZATION.

It will be recalled from the evidence that is without dispute, that the Petitioner when applying for benefits said he was willing and able to accept any suitable employment, and did not impose any restrictions with regard to hours or distances. Yet, the respondents and the Court of Appeal held that the Petitioner was unavailable for work, pursuant to Section 1253(c) of the Unemployment Insurance Code, because he refused to present documentary evidence as to his immigration status.

A. The Respondents Relied on Section 1253(c)

The respondents based their findings on Section 1253(c) of the Unemployment Insurance Code, which reads very simply:

> "An unemployed individual is eligible to receive unemployment compensation benefits with respect to any week only if the director finds that he was able to work and available for work that week."

Nowhere in Section 1253(c) or in the entire code section on eligibility requirements is there any mention of immigration status as a prerequisite to being available for work. "Availability for work" was discussed and the principles set out in Garcia v. California Employment Stabalization Commission, 161 P.2d 972, 71 Cal.App.2d 107. In that case the court stated that "availability for work" within the availability for suitable work which the claimant has no good cause for refusing. The Garcia case establishes a basic definition of "availability for work."

In arriving at its decision in the Garcia case, the Court cited the case of Hagadone v. Kirkpatrick, Idaho, 154 P.2d 181, in which the same question of "availability" is adjudicated and the same conclusion obtained.

In the matter of the People v. Nest, 53 Cal.App.2d 856, 128 P.2d 444 the court directs

its attention to the same question of "availability." The Court held:

> "We find there was no substantial evidence to support the trial court's implied finding that the defendant was not available for work where the claimant was physically able to work, was registered for work with the department of employment, and where he did not refuse an offer of suitable work."

In interpreting Garcia v. California Employment Stabalization Commission, 76 Cal. App.2d 231, 172 P.2d 938; People v. Nest, 53 Cal.App.2d 856, 128 P.2d 444; and Leow's, Inc. v. California Employment Stabalization Commission, 76 Cal.App.2d 231, 172 P.2d 938; it becomes apparent that "availability for work" connotes nothing more than a mental and emotional willingness to accept suitable employment. With this criteria as a basis, its apparent that the Petitioner has met the established definition of availability as set forth by the foregoing cases. There's no evidence in the record to suggest that the Petitioner was even remotely unavailable using this criterion.

It becomes increasingly apparent that the respondents have vastly departed from the established definition of available for work and the language and intent of the Code itself in determining that the Petitioner was unavailable for work. They have imposed a new requirement that neither logically nor legally belongs

within the context of available for work. Especially in view of the fact, that there is no existing valid law prohibiting the hiring of undocumented aliens.

B. Federal Preemption

Perhaps if Section 2805 of the Labor Code of California, enacted in 1971, were a valid law still in effect, the respondents' contentions would have some merit. That Section states:

> "No employer shall knowingly employ an alien who is not entitled to lawful residence in the United States if such employment would have an adverse effect on l awful resident workers."

Therefore immigration status would become a factor of employability as a matter of law. However, the California Court of Appeal has declared Code Section 2805 of the Labor Code of California as an invalid invasion of a federally preempted area in Dolores Canning Co. v. Howard, 40 Cal.App.3d 673 (115 Cal.Rptr. 453), and De Canas v. Bica, 40 Cal.App.3d 976 (115 Cal. Rptr. 444), hg. The current law of California is as stated in the case of Dolores Canning.

Therefore we are left with a situation where the employment of undocumented persons is not prohibited, and no evidence was presented by the respondents to show that employers are unwilling

to hire undocumented persons. Yet the Petitioner was erroneously classified as unavailable for work.

The Court of Appeal differenciates and points out that the plaintiffs in Dolores Canning and De Canas were citizens. This fact is superfluous in that the constititional subject matter is the same and the precedent established in those cases sets the criterion to be followed by government administrative agencies. Either the federal government has preempted the immigration field or it has not. To hold that its unconstitutional for some while not for others constitutes a selective unfairness which itself violates the 14th Amendment to the Constitution.

Furthermore, the respondents should not be permitted to rewrite Section 1253(c) for the purpose of imposing philosophies not intended nor stated by the legislature. The Petitioner feels that this is intellectually dishonest and that all the people of the State of California will suffer if their laws are subjected to ambiguous interpretations for the purpose of enforcing philosophies not mentioned in their statutes. In essence, this constitutes an assumption of power and is a dangerous precedent. In the People v. Nest, 53 Cal.App.2d 856, 128 P.2d 444, the Court held:

> "Words in a statute should be given their ordinary meaning and receive a sensible construction in accord with the commonly understood meaning thereof unless a different meaning is clearly intended."

Immigration status requirements as prerequisites within the meaning of Section 1253(c) are the proper subject of the legislative to act upon, federal preemption notwithstanding. To hold otherwise will effectively deprive the people of the State of California of a legislative voice on such matters and provide the respondents with an opportunity to circumvent the precedents established in Dolores Canning v. Howard, 40 Cal. App.3d 673 [115 Cal.Rptr. 435], and De Canas v. Bica, 40 Cal.App.3d 976 [115 Cal.Rptr. 444].

C. Respondents' Public Policy

Its apparent that the respondents and the majority decision of the Court of Appeal are promoting public policy as a justification for denying the Petitioner benefits. The judicial flaw in this type of reasoning is eloquently manifested in the dissenting opinion of Justice Thompson, which states in part:

> "To the extent that the public policy argument of the majority opinion is construed as application of a state public policy, it suffers from a vital constitutional flaw if Dolores Canning and De Canas are accepted as valid. Federal preemption applies just as much to judicial legislation by a state court as it does to law enacted by the legislative body of a state. If an area is federally preempted by the

constitution, a state public policy can no more justify a state decision resting on the local policy than can the same public policy justify a state legislative enactment."

To the extent that the public policy argument of the majority opinion is construed as a statement of federal public policy, it wrongly states it. The majority opinion rests upon a partial and consequently deceptive characterization of Public Law 283 of the 82nd Congress (2d Sess.) to state that there is a federal public policy against payment of unemployment insurance benefits to aliens not legally present in their country. Public Law 283 now incorporated in 8 U.S.C. Section 1324, subdivision (a), states in Section 8, subdivision (4) that it is a felony to wilfully or knowingly encourage or induce an alien illegally to enter the United States. But the same Section 8, subdivision (4) ends with the sentence:

> "Provided however, that for the purposes of this section, employment including the usual and normal practices incident to employment shall not be deemed to constitute harboring. Congress has, in terms that alley all doubt declared that the employment of the illegal alien and practices normally incident to the employment are not contrary to federal public policy or law. The federal public policy condones and does not condemn

> the employment. (Dolores Canning Co. v. Howard, 40 Cal.App.3d 673, 684; Cobos v. Mello-dy Ranch, 20 Cal. App.3d 947, 950-95 (98 Cal.Rptr.). In view of the condonation, I disagree with the majority's conclusion that the normally incidental practice of payment of unemployment insurance benefits when the alien's employment terminates is somehow contrary to federal public policy."

The only place in the Unemployment Insurance Code where public policy is mentioned is in Section 100. Section 100 sets a general guideline for the public policy to be implemented and followed by the respondents. Nowhere in the public policy directive of Section 100 is there any mention of immigration status. Section 100 declares that it is in the public good and welfare that funds be set aside and benefits be provided for persons unemployed through no fault of their own. This concept is also stated in Coast Parking Company v. California Department of Employment, 202 Cal.App.2d 733, 21 Cal.Rptr. 130 and Matson Terminals v. California Emp. Comm., 24 Cal.2d 695, 151 P.2d 202. Instead of attempting to disburse benefits to the Petitioner, the respondents have deprived him of benefits. In the words of Section 100, this deprivation is not in the public good. It appears that the respondents are circumventing existing California public policy in an attempt to implement some other type of policy. The Petitioner submits that the respondents should adhere to this statute.

Public policy may be a proper consideration in determining eligibility for benefits but in the words of the dissenting members of the Appeals Board, "that public policy should be expressed somewhere within the language of the Code itself."

In McCarthy v. City of Oakland, 60 Cal. App.2d 544, 141 P.2d 4 the Court expounds on the effect of public policy created by Statute:

> "Public policy is sometimes declared by judicial decision, but where a legislative body have jurisdiction over pension rights has enacted specific provisions on the subject, the public policy on that subject is established thereby."

The only objective the respondents can achieve by entering the field of Immigration and Naturalization is to enforce immigration laws by punishing claimants. As aforestated, this is a preempted area. This type of law of such a far reaching magnitude should not be created at the administrative policy level as it tends to subvert the existing statutory directive regarding the disbursement of benefits.

The mere fact that the respondents are disbursing benefits to aliens does not necessarily mean that the respondents are undermining or subverting immigration laws. Unemployment insurance benefits have nothing to do with immigration law but are a result of vesting economic

interests. See Stanley v. Unemployment Insurance Appeals Board, 6 Cal.App.3d 675, 86 Cal.Rptr. 294. In fact,in order for a claimant to qualify for benefits he has to establish a valid fund through past employments. In other words a claimant has to contribute his labor and services in order to qualify. Employers and our economy are benefitting through their labor. Are they not entitled to something in return? The respondents and the majority decision of the Court of Appeal promote the concept that undocumented aliens are unjustly unriched by our system in that they receive so much while giving little in return. However, this has not been proven to be the case. For example - a recent study conducted by the United Way in Los Angeles demonstrates that the undocumented aliens contribute far more in taxes than they receive in terms of services and assistance. (A copy of said report is attached to this Petition and by reference made a part hereof). The Petitioner requests that the Court take judicial notice of this report.

Another report prepared by the United States Labor Department further demonstrates that undocumented aliens give far more than they receive from our system. For example, that study indicates that only 1.3% of undocumented aliens received food stamps and 0.5% of them received welfare payments. While 44% of the undocumented aliens paid hospital insurance, only 27.4% used hospitals or clinics. These figures when compared to the substantial income tax, sales tax and property tax contribution by undocumented aliens, truly demonstrates that the these pwersons are not really being enriched at

the expense of our system but in essence are apparently being exploited themselves.

For the foregoing reasons it is respectfully urged that the Petitioner, was at all times available for work based on Section 1253(c) of the Unemployment Insurance Code and Public Policy.

II

THE RESPONDENTS AND COURT OF APPEAL ACTED UNCONSTITUTIONALLY IN SUSPENDING THE "EQUAL PROTECTION OF THE LAW" AND "DUE PROCESS" PROVISIONS OF THE CONSTITUTION IN DETERMINING PETITIONER'S CLAIM FOR BENEFITS

The respondent Appeals Board in its majority decision stated that the Petitioner was not entitled to "equal protection ofthe law" and "due process."

The claimant and Petitioner in this matter was at all time a legal resident. Then, how did the respondents arrive at the conclusion that the Petitioner was an illegal entrant? They did it by creating an artificial hypothesis based on Evidence Code Sections 412 and 413, that in as much as the Petitioner refused or failed to show documentary evidence

as to the legality of his presence in this country he must be an illegal entrant. It is a well established principle that aliens are entitled to equal protection of the law and due process.

See:

Yick Wo v. Hoplins,
118 U.S. 356, 30 L.Ed. 220,
65 Sup.Ct. 1064;

In re Kotta,
187 Cal. 27, 200 P. 957;

Takahashi v. Fish and Game Commission,
30 Cal.2d 719, 187 P.2d 805;

Section 261, Constitutional Law,
11 Cal. Jur. 2d, page 700.

The Petitioner contends that there is no basis for the suspension of due process and equal protection of the law in the Petitioner's matter for the purpose of determining that he was an undocumented alien. Sections 412 and 413 of the Evidence Code are not really in point and are not intended to be used as a final determining factor but as a mere guide.

Just merely making the bald assertion that the Petitioner is an illegal alien while not following the accepted procedures and constitutional standards of proof is of little constructive consequence. The respondents should first be required to uphold the constitution in making a

determination as to the legality of the petitioner's immigration status before concluding that he is an illegal alien. To do otherwise subverts the constitution and high standards of jurisprudence established in our country over the years.

In matters pertaining to illegal and deportable aliens inside the United States, the burden of proof is on the government to prove illegality.

See:

Palmer v. Ultimo,
69 F.2d 1 (7th Cir.);

Gastelum-Quinones v. Kennedy,
374 U.S. 469, 83 S.Ct. 1819;

De Lucia v. Flagg,
297 F.2d 58, 7th Cir., cert. den.
369 U.S. 837.

The respondents should have to meet this same burden of proof. The respondents have not presented any evidence to meet this burden of proof but, instead have attempted to shift the burden of proof. This, itself, is a violation of due process and equal protection of the law.

The respondents have violated due process and equal protection of the law in determining Petitioner's eligibility for benefits.

A. The Actions of the Respondents Department of Human Resources Development in Requiring Only a Certain Segment of California Applicants for Unemployment Insurance Benefits, as a Prerequisite for Such Benefits, to Present Documentary Evidence to Prove the Legality of Their Presence in This Country, While Not Requiring Others to Do So Is Unconstitutional.

The respondents have been violative of Fourteenth Amendment to the Constitution from the inception. The law is well established that aliens are entitled to equal protection of the law.

See:

Yick Wo v. Hopkins,
118 U.S. 356, 30 L.Ed. 220,
6 S.Ct. 1064;

In re Kotta,
187 Cal. 27, 200 P. 957;

Takahashi v. Fish and Game Commission,
30 Cal.2d 719, 185 P.2d 805;

Section 261, Constitutional Law,
11 Cal. Jur. 2d, page 700.

When a legal resident alien applies for unemployment insurance benefits, he is immediately asked by the respondents to present documentation to prove the legality of his presence in the United States. However, when a claimant claims to be a citizen, he is not asked to present a birth certificate or any documentary evidence and is not required to make any proof as to the legality of his presence in the United States. Therein lies the inequality and unfairness. Either everyone should have to prove, by documentary evidence, the legality of their presence in the United States or nobody should be so required. By singling out a certain segment of Californians and treating them differently, the respondents have effectively denied them equal protection of the law.

See: In re Kotta, 187 Cal. 27, 200 P. 957 in which the Supreme Court of California held the following:

> "Laws placing a higher burden on only a portion of similarly situated persons denies to such portion the equal protection of the laws."

The Court also held that the,

> "Word person within equal protection of laws includes aliens."

CONCLUSION

In conclusion it is respectfully urged that the Petitioner was unemployed through no fault of his own and no evidence was presented to suggest that the Petitioner imposed any restrictions with regard to employment. The Petitioner demonstrated a mental and emotional willingness to accept employment. This combined with the fact that there is no law in effect prohibiting the employment of undocumented aliens clearly indicate that the Petitioner was available for work pursuant to Section 1253(c) of the Unemployment Insurance Code.

With regard to public policy being a consideration in determining eligibility for unemployment insurance benefits, any policy involving immigration status is an intervention into a federally preempted area and a misstatement of federal public policy. The Petitioner contends that all policies should be implemented in light of Section 100 of the Unemployment Insurance Code, as this is where the legislative has provided the direction for the disbursement of benefits.

Furthermore, the respondents have created requirements that go beyond the language and authority granted by statutes. If this kind of a precedent is allowed, it would make the law ambiguous. The Petitioner recognizes the importance of the respondents' duties. But the respondents should not implement policies

at the expense of existing statutes, the traditional tri-separation of powers and principles of constitutional law, "For ours is still a country of laws and not men."

For these reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Supreme Court and Court of Appeal for the Second Appellate District of California.

Respectfully submitted,

MANUEL LOPEZ

Attorney for Petitioner

APPENDIX A

2nd Civil No. 44695

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

ALONSO

v.

THE STATE OF CALIFORNIA ET AL.

SUPREME COURT
FILED
SEP 24 1975
G. E. BISHEL, Clerk

Deputy

Application for relief from default is granted.

The petition for hearing is denied.

I, G. E. Bishel, Clerk of the Supreme Court of the State of California, hereby certify that the above is a true copy of an order of said Court, as the same appears of record in my office.

Witness my hand and the seal of the Court this 19th day of Dec A.D. 1975

Clerk

By Deputy Clerk

TOBRINER, J

Acting Chief Justice

75-877

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1975
No. 75-877

JULIO ALONSO,

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STATE OF CALIFORNIA DEPARTMENT OF HUMAN RESOURCES AND STATE OF CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD,

Respondents.

PART 2 OF APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

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IN THE SUPREME COURT OF THE UNITED STATES

October Term 1975

No. 758-77

JULIO ALONSO,

Petitioner,

vs.

STATE OF CALIFORNIA DEPARTMENT OF HUMAN RESOURCES AND STATE OF CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD,

Respondents.

PART 2 OF APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

JULIO ALONSO, Petitioner and Appellant, v. STATE OF CALIFORNIA, DEPARTMENT OF HUMAN RESOURCES AND STATE OF CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD, Respondents.	2d Civil 44695 (Super.Ct. No. C 736[illegible])

APPEAL from a judgment of the Superior Court of Los Angeles County. Campbell M. Lucas, Judge. Affirmed.

Manuel Lopez for Petitioner and Appellant.

Evelle J. Younger, Attorney General, and Melvin R. Segal, Deputy Attorney General, for Respondents.

APPENDIX B

INTRODUCTION

This is an appeal from a superior court judgment denying a writ of mandate brought by petitioner, an alien, seeking a reversal of a decision denying his application for unemployment insurance benefits.

The petitioner, appellant herein, an alien and not a United States citizen, refused to present to employees of the governmental agency charged with the responsibility of monitoring the unemployment insurance payments any documentary evidence from the Immigration and Naturalization Service to verify that he was able to accept employment. Following the required procedures and hearings, he was denied unemployment insurance benefits on the basis that he was not "available for work" within the meaning of section 1253, subdivision (c) of the Unemployment Insurance Code which provides that a claimant is eligible to receive benefits with respect to any week only if "[h]e was able to work and available for work for that week."

THE CASE

Applicant/petitioner/appellant Julio Alonso (hereinafter ALONSO) applied for unemployment insurance benefits from the Employment Development Department, previously the Department of Human Resources Development (hereinafter referred to as the DEPARTMENT). ALONSO was denied unemployment benefits because he did not have a registration card or any documentary evidence from the

United States Immigration and Naturalization Service to verify that as an alien he was able to accept employment.

An appeal was taken from the DEPARTMENT'S decision, and a hearing was held before a DEPARTMENT referee. At that hearing ALONSO admitted that he was an alien and not a United States citizen but refused to state whether his entry into the United States was legal on the basis that such evidence was irrelevant in determining whether he was available for work. He did not rely on the Fifth Amendment. He told the interviewer he had lost his registration card but gave no reason why he failed to obtain a duplicate. Since he refused to produce any information to the referee regarding his status in the country, his request for benefits was denied.

The California Unemployment Insurance Appeals Board (hereinafter referred to as the BOARD) affirmed the referee's decision and held that ALONSO was disqualified for benefits under section 1253, subdivision (c) of the Unemployment Insurance Code.[1/]

1/ Section 1253, subd. (c) of the Unemp. Ins. Code states in pertinent part:

"An unemployed individual is eligible to receive unemployment compensation benefits with respect to any week only if the director finds that:

". . . . . .

"(c) He was able to work and available for work for that week."

Thereafter, ALONSO filed a petition for writ of mandate with supporting documents in the superior court seeking a reversal of the BOARD'S decision. The DEPARTMENT responded and the administrative transcript and pleading were received into evidence. Following a hearing, the superior court denied the writ and, applying the independent judgment test, held that the weight of the evidence supported the findings; that the findings supported the decision of the BOARD; that there was no abuse of discretion; and that, based on the fact that ALONSO had failed to present any kind of proof that the Immigration and Naturalization Service was aware he was in the United States, he was unavailable for work within the meaning of section 1253, subdivision (c) of the Unemployment Insurance Code.

ISSUES

The broad determinative issues presented on appeal are (1) whether or not there was a constitutional or other impediment to the DEPARTMENT'S requirement that an alien must furnish evidence that the Immigration and Naturalization Service is aware of his presence in the United States, and (2) if such evidence is not furnished by the alien, whether or not the DEPARTMENT could refuse payment of unemployment insurance benefits on the basis that the applicant/alien is unavailable for work within the meaning of section 1253, subdivision (c) of the Unemployment Insurance Code.

DISCUSSION

During oral argument counsel for appellant ALONSO urged that the federal government has preempted the field in matters pertaining to aliens within our borders and that the recent appellate court cases of Dolores Canning Co. v. Howard, 40 Cal.App.3d 673 [115 Cal.Rptr. 435], and DeCanas v. Bica, 40 Cal.App.3d 976 [115 Cal.Rptr. 444], are controlling and dispositive of the case at bench.

In Dolores Canning Co., several employers brought an action against the Labor Commissioner and the Division of Labor Law Enforcement contending that Labor Code section 2805 (prohibiting the employment of an alien who is not entitled to lawful residence if the employment would have an adverse effect on resident workers) was unconstitutional. In affirming the superior court's order permanently enjoining enforcement of the labor statute, the reviewing court concluded that the statute was unconstitutional because the federal government had exclusive jurisdiction in this field barring state action and that the Labor Code provision encroached and interfered with the comprehensive regulatory scheme enacted by Congress in the exercise of its exclusive power over immigration.

In DeCanas, et al., several farm workers brought an action bottomed on the same Labor Code section involved in Dolores Canning Co., section 2805, against certain farm labor contractors, alleging the contractors had discharged them from employment and had not rehired them, claiming they

had a sufficient labor supply. The plaintiff farm workers asserted that the labor supply consisted of aliens illegally within this country and that the defendant farm labor contractors knowingly hired such illegal aliens in the stead of qualified lawful residents. The trial court sustained defendant farm labor contractors' demurrer without leave to amend and entered a judgment of dismissal, holding that section 2805 of the Labor Code was unconstitutional. The court of appeal affirmed, holding that section 2805 of the Labor Code was in conflict with the national law and policy.

The plaintiff employers in Dolores Canning Co. and the plaintiff farm workers in DeCanas were all United States citizens, with their claims both bottomed on a California Labor Code provision (§ 2805). In the case at bench, plaintiff ALONSO is an admitted alien, found to be illegally in the country by the BOARD decision,[2/] and not a

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2/ California Unemployment Insurance Appeals Board, case No. 72-8624, Precedent Benefit Decision No. P-B-153, page 2, dated June 5, 1973, reads in pertinent part:

"The claimant in this case has refused to answer questions or submit proof as to whether his entry into the United States was legal. His refusal is based upon the assertion that such evidence is irrelevant. We do not agree for if the claimant is in the country illegally an issue arises as to whether it would be against public policy to grant benefits to the claimant (Benefit Decision No. 6153). The failure of the claimant to produce evidence of his status when it was within his power to do so gives rise to an inference that his entry into this country was illegal and we so find (Evidence Code, sections 412 and 413)."

United States citizen, and seeks a court order to force the DEPARTMENT to pay him unemployment insurance benefits under section 1253, subdivision (c) of the Unemployment Insurance Code and does not involve the Labor Code. Accordingly, we find Dolores Canning Co. and DeCanas to be distinguishable and inapplicable.

We, however, acknowledge that the federal government is vested with the exclusive right to regulate immigration and naturalization and a state may not interfere with that exclusive right. (See Hines v. Davidowitz (1941) 312 U.S. 52, 66 [85 L.Ed. 581, 61 S.Ct. 399].) We recognize that aliens in the United States are afforded many, if not most, of the privileges and rights enjoyed by its citizens. For example, they are entitled to the "equal protection" of the laws encompassed in the Fourteenth Amendment in the states in which they reside (Yick Wo v. Hopkins (1886) 118 U.S. 356, 369 [30 L.Ed. 220, 226, 6 S.Ct. 1064]), and they are persons within the protection of the Fifth Amendment and may not be deprived of life, liberty or property without "due process of law." (Kwong Hai Chew v. Colding (1953) 344 U.S. 590, 596 [97 L.Ed. 576, 583, 73 S.Ct. 472].)[3/]

3/ In a footnote the Kwong Court stated that "[t]he Bill of Rights is a futile authority for the alien seeking admission for the first time to these shores. But once an alien lawfully enters and resides in this country he becomes invested with the rights guaranteed by the Constitution to all people within our borders." (Page 596, footnote 5 citing Bridges v. Wixon, 326 U.S. 135, 161, concurring opinion [85 L.Ed. 2103, 2119, 65 S.Ct. 1443]; see also Hellenic Lines Ltd. v. Rhoditis (1970) 398 U.S. 306, 309-310 [26 L.Ed.2d 252, 256, fn. 5 [90 S.Ct. 1731], regarding rights of "lawfully" entered aliens.

In the area of employment, aliens lawfully in the United States have a right to earn a living in the ordinary occupations of the community (Truax v. Raich (1915) 239 U.S. 33, 39 [60 L.Ed. 131, 36 S.Ct. 7]), including earning a living fishing in offshore waters in the same way as other state inhabitants earn their living (Takahashi v. Fish and Game Commission (1948) 334 U.S. 410, 418-419 [92 L.Ed 1478, 68 S.Ct. 1138]), and may engage in the practice of law in California. (Raffaelli v. Committee of Bar Examiners, 7 Cal.3d 288 [101 Cal.Rptr. 896, 496 P.2d 1264].)

The United States Supreme Court in Graham v. Richardson (1971) 403 U.S. 365 [29 L.Ed.2d 534, 91 S.Ct. 1848], held that a state could not deny welfare benefits to lawfully resident aliens; that "[u]nder traditional equal protection principles, a State retains broad discretion to classify as long as its classification has a reasonable basis. [Citations.] This is so in 'the area of economics and social welfare.' [Citation.] But the Court's decisions have established that classifications based on alienage, like those based on nationality of race, are inherently suspect and subject to close judicial scrutiny. Aliens as a class are a prime example of a 'discrete and insular' minority [citation] for whom such heightened judicial solicitude is appropriate." (Graham v. Richardson, supra, 403 U.S. at pp. 371-372; see also Purdy & Fitzpatrick v. State of California, 71 Cal.2d 566 [79 Cal.Rptr. 77, 456 P.2d 645].)

However, the common thread running through the above referenced cases involving employment of aliens is that they refer to "lawfully resident" aliens. If an alien is here unlawfully, he has no rights under the Constitution of the United States to equal opportunity of employment as enjoyed by lawfully resident aliens (see Pilapil v. Immigration and Naturalization Service (10th Cir. 1970) 424 F.2d 6, 11) and has no right to work.

It is thus apparent that the language of the Constitution is broad enough to encompass aliens, and constitutional protections usually have been afforded them. However, this has not been invariably the case, and judicial conclusions have varied under different contexts and periods of time.4/

Under the unique combination of factors of the case at bench we conclude that the federal plenary power in the immigration field does not place the instant case in the "no-man's-land" category. Here, we have a question of an illegal alien's right to unemployment insurance benefits in which not only the federal government but also the sovereign State of California has a legitimate interest.

4/ See: California Western Law Review, Vol. 9, Fall 1972, No. 1, pp. 1-2, "The Alien and the Constitution," Charles Gordon, General Counsel, United States Immigration and Naturalization Service; Adjunct Professor of Law, Georgetown University Law Center; co-author of Gordon and Rosenfield, Immigration Law and Procedure.

Accordingly, acknowledging that the federal government has exclusive power over the admission, exclusion and deportation of aliens, we hold that under the facts of the case at bench, involving not only an alien but also the Unemployment Insurance Code of the sovereign State of California, that state action pursuant to section 1253, subdivision (c) of the Unemployment Insurance Code is not barred and that such action does not conflict with, encroach upon or interfere with the regulatory scheme enacted by Congress in the exercise of its exclusive power over immigration.

To the contrary, we hold that the action by the DEPARTMENT in requiring that ALONSO supply evidence that the Immigration and Naturalization Service was aware of his presence in the United States was relevant and proper, and that the DEPARTMENT'S finding that ALONSO was not entitled to unemployment insurance payments, by reason of not being "available for work" within the meaning of Unemployment Insurance Code section 1253, subdivision (c), was in complete conformity with, consistent with, in support of, and in harmony with federal legislation pertaining to immigration as well as federal-state procedures in the unemployment insurance field for the following reasons:

FIRST:

The procedure apparently followed in the instant case to determine eligibility for unemployment insurance benefits was proper and reasonable. The record reflects

that a form is supplied each applicant which asks the following questions among others: name, social security number, marital status, whether the claimant is or is not a United States citizen, and questions regarding his employers and the type of work he can perform. If the claimant checks off the box stating he is not a United States citizen, he will be asked to furnish evidence that the Immigration and Naturalization Service is aware of his existence in this country.

The question as to ALONSO'S status is necessary to determine whether he is an illegal alien and whether he is available for work. To ask a claimant his status does not violate any of his rights. (People v. Mendoza, 251 Cal.App.2d 835, 840 [60 Cal.Rptr. 5].)

Furthermore, the state has a justifiable reason for the classification to determine if the person would be one that would be able to work and available for work. (See Graham v. Richardson, supra, 403 U.S. at p. 371.) The state also has an interest in the economic effects of placing aliens in the labor market. (See Goldstein v. California (1973) 412 U.S. 546 [37 L.Ed.2d 163, 93 S.Ct. 2302], regarding state economic interests and the concept of federalism.) The question of one's status is clearly not for the purpose of enforcing or subjugating the federal immigration laws. (See Diaz v. Kay-Dix Ranch, 9 Cal.App.3d 588 [88 Cal.Rptr. 443].)

In the case at bench, appellant admitted he was

an alien and not a United States citizen and refused to furnish information as to whether or not the Immigration and Naturalization Service was aware he was in the United States, not on the ground of self-incrimination but on the ground it was irrelevant.[5/] He claims that he is entitled to unemployment insurance benefits regardless of his alien status, legal or illegal.

5/ The reporter's transcript of the November 5, 1972, hearing contains the following:

"JULIO ALONSO
"being duly sworn, testified as follows:

"BY THE REFEREE:

"Q Mr. Alonso, are you a U.S. citizen?
"A No, I am not.
"Q You are then, an alien?
"A Yes.
"Q Do you have any evidence to submit as to your legal entry into the United States?
"A No, I don't.
"Q Did the Department ask you to provide certification from the Immigration Department that you were duly admitted?
"A Yes, they asked me, and as far as it is stated on the notice that was sent to me, and as I understand, it was a basis for the disqualification of my benefits.
"Q Why do you not have such a card to verify your legal entry, if that be the case?
"A That's what the issue is, the issue requiring me to present this green card.
"Q Were you legally admitted into the country?
"A I beg your pardon?
"Q Were you legally admitted into the country?
"A (NO RESPONSE)
"Q You may refuse to answer that question if you think it may incriminate you.

"MR. MANDLER: Can I state an objection, then?
"He declines to answer or admission [sic] further to the record on the basis that any inquiry into his legal status or his status as an alien. It's irrelevant.

It is well established that the burden is on the claimant to prove his eligibility and his availability for work. (Loew's Inc. v. California Emp. etc. Com., 76 Cal. App.2d 231, 238 [172 P.2d 938]; Ashdown v. State of California, 135 Cal.App.2d 291, 300 [287 P.2d 176]; Spangler v. California Unemp. Ins. App. Bd., 14 Cal.App.3d 284, 287 [92 Cal.Rptr. 266].) If the claimant cannot prove his eligibility, he is not entitled to benefits.

We hold that the questions posed were relevant and it was a proper matter of inquiry in that "availability" for work in the context of Unemployment Insurance Code section 1253, subdivision (c) is a question to be determined from the circumstances of each case, including his legal availability.

Footnote 5 continued

"REFEREE: Well, the referee rules it's not irrelevant.
"Now, if he refuses to answer on the grounds it might incriminate him, certainly, this would be acceptable, or I'll acknowledge the fact that he refuses to answer the question for any reason, but I certainly rule it is relevant for this proceeding.

"MR. MANDLER: Well, that's the ground on which he refuses to answer the question.

"REFEREE: All right. In spite of the fact that I informed you that the matter is relevant, does the claimant still refuse to answer the question?
"A Well, to answer that question, like Mr. Mandler here is saying it is, we feel that it is irrelevant to the case and that's, that's the reason why I decided to appeal the decision that was made by the Department."

Just as a person can be requested to produce his driver's license when stopped for a driving offense without violating his rights, so can the DEPARTMENT request documents regarding the claimant's status in this country. In California v. Byers (1971) 402 U.S. 424 [29 L.Ed.2d 9, 91 S.Ct. 1535], an automobile driver, who was required to stop and furnish his name and address after involvement in an automobile accident pursuant to the pertinent California Vehicle Code authorizing such a stop, attacked the code provision on the ground that it was violative of his privilege against self-incrimination. However, in the case at bench, the appellant does not claim a violation of his Fifth Amendment right but refused to supply the answer on the basis that it is irrelevant. The United States Supreme Court noted in California v. Byers, supra, that an organized society often imposes burdens on its constituents, listing examples at pages 427-428 as follows: "It commands the filing of tax returns for income; it requires producers and distributors of consumer goods to file informational reports on the manufacturing process and the content of products, on the wages, hours and working conditions of employees. Those who borrow money on the public market or issue securities for sale to the public must file various information reports; industries must report periodically the volume and content of pollutants discharged into our waters and atmosphere. Comparable examples are legion."

SECOND:

The BOARD'S action in the case at bench is obviously consistent with and supportive of and in complete harmony with federal legislation pertaining to immigration.

The 82nd Congress, Second Session, enacted Public Law 283 (House Rep. No. 1377), commonly referred to as the "wet-back Bill." It is "[A]n Act to assist in preventing aliens from entering or remaining in the United States illegally." The statute includes a provision making it a felony to knowingly encourage, either directly or indirectly, the entry into the United States of any aliens not duly admitted.

The BOARD set forth in its decision its rationale for concluding ALONSO was not entitled to benefits on both a national and state public policy. The BOARD, in part, said at pages 3-4:

"It would be an absurd consequence for the Department of Human Resources Development of the State of California to assist a person, an illegal entrant, seeking advantages that, in our opinion, are available only to citizens and others who are lawfully admitted to our country. Denied unemployment benefits, he will not be as likely 'to succeed in maintaining himself and accomplishing his cheat upon the government.' . . . .

"We do not feel compelled by the Fourteenth Amendment or the laws adopted under it to grant benefits to the claimant. If an alien comes here legally, he is entitled

to equal protection of the Law (Ex parte Kurth, 28 Fed.Supp. 258, 263), but the claimant, being an illegal entrant, 'does not have the status of a nonresident alien, or resident alien, and while it may be difficult according to the strict definitions of international law to classify him, it clearly appears that he is a defiant person challenging the ability of this country to enforce its own laws.' The protection of the Fourteenth Amendment does not extend to giving an illegal entrant the right to demand the assistance of the State 'in frustrating the plain purpose of Congressional Acts regulating immigration.' . . . .

"Our conclusion that the claimant is not entitled to benefits has a rational basis related to a national as well as state public policy and is reasonably calculated to carry out that policy (Dandridge v. Williams (1970), 397 U.S. 471, 90 S. Ct. 1153). . . .

"We have an obligation not to subvert the federal statutory scheme which controls the presence of aliens and immigrants in this country. This scheme is codified in Title 8 of the United States Code. That title prescribes detailed procedures to which aliens and immigrants are subject. It imposes registration requirements on aliens, it subjects them to physical examination and fingerprinting, it controls the circumstances under which they can work in this country, etc. Among other things, Congress has shown concern that jobs which might otherwise be available to aliens lawfully residing here and to American citizens,

might be taken by persons coming to this country unlawfully. For that reason, aliens are often required to obtain a certification from the United States Attorney General that they may lawfully engage in their particular work or occupation. See 8 U.S.C. § 1182(a)(14), (1964 Ed. Supp. V).

"Providing benefits to, and referring to work, aliens who are illegally in this country and who have not been certified for work, either through work permits or otherwise, the State, in effect, would be subverting the federal scheme and would be subsidizing persons who are performing illegal acts. Clearly the State of California has a duty not to undermine the alien registration law or to compromise the intent of Congress that jobs be first available to American citizens and aliens lawfully residing here and entitled to work." We concur.

Furthermore, even if appellant put money into the fund, he is not entitled to the benefits. An illegal alien who enters the United States without inspection in violation of Title 8 United States Code section 1251 is subject to deportation. His entry is illegal and any subsequent acts done by him in this country would be in furtherance of that illegal entry. To allow an illegal alien to collect unemployment benefits would reward him for his illegal entry into this country. In essence, his entry into this country is fraudulent, and as such he should not be allowed to profit from the illegal act. (See Reid v. Immigration and

Naturalization Service, ___ U.S. ___ [___ L.Ed.2d ___, ___ S.Ct. ___, 43 L.W. 4387].)

It has also been held that a claimant "has no constitutional right to unemployment compensation paid by former employers if his sartorial eccentricities or sloppy grooming chill his employment prospects, and he voluntarily refuses reasonable accommodation to meet the demands of the labor market. . . . [Citations.]" (Spangler v. California Unemp. Ins. App. Bd., supra, 14 Cal.App.3d at p. 287.) This principle could logically be applicable to one who voluntarily enters the United States illegally and is subject to immediate arrest and deportation by reason of his own conduct.

THIRD:

The BOARD'S action in the case at bench is in complete harmony with and compelled by the federal laws on unemployment insurance. One of the federal statutes which applies to the states in the area of unemployment insurance is the Wagner-Peyser Act (29 U.S.C. §§ 49-49(k)). That act states in section 3: "(a) It shall be the province and duty of the bureau to promote and develop a national system of employment offices for men, women, and juniors who are legally qualified to engage in gainful occupations, . . . to assist in establishing and maintaining systems of public employment offices. . . ." (Emphasis added.) The regulations make clear that this statute is only meant to apply

to those who are legally qualified to work. For example, at 20 C.F.R. § 604.1, it is stated that the policy of the United States employment service is: "(a) To accept an application from any applicant, legally qualified to work, without regard to his place of residence, current employment status, or occupational qualifications." (Emphasis added.)

Before federal funds under the act are made available to the states, it must be clear that the state is complying with the federal law. As stated at 20 C.F.R. § 601.1: "State unemployment compensation laws are approved and certified as provided in section 3304 of the Internal Revenue Code of 1954; . . . findings are made whether the States have accepted the provisions of the Wagner-Peyser Act and whether their plans of operation for public employment offices comply with the provisions of said Act. . . .

"Grants of funds are made to States for administration of their employment security laws if their unemployment compensation laws and their plans of operation for public employment offices meet required conditions of Federal law. [Citations.]"

The State of California has passed necessary statutes to indicate its acceptance of the Wagner-Peyser Act. The procedures employed by the DEPARTMENT were designed to insure California qualifies for federal funds under the Wagner-Peyser Act. The federal and state regulations

require that an applicant must be legally qualified to work. A fortiori an individual illegally in this country cannot be legally qualified to work here. Thus it was perfectly proper for the DEPARTMENT to inquire of an alien as to his status and to deny unemployment insurance payments to illegal aliens in order to maintain California's eligibility for federal funds under the Wagner-Peyser Act.

FOURTH:

Chief Justice Burger in his concurring opinion in United States v. Brignoni-Ponce, ___ U.S. ___ [___ L.Ed.2d ___, ___ S.Ct. ___, 43 L.W. 5028, 5033], attached as an appendix to his opinion an excerpt from Judge Turrentine's opinion in United States v. Baca (S.D. Cal. 1973) 368 F.Supp. 398, 402-403. A portion of the appendix, entitled "The Illegal Alien Problem," is set out below:

"Currently illegal aliens are in residence within the United States in numbers which, while not susceptible of exact measurement, are estimated to be in the vicinity of 800,000 to over one million. Department of Justice, Special Study Group on Illegal Immigrants from Mexico, A Program for Effective And Humane Action on Illegal Mexican Immigrants, 6 (1973), [hereinafter cited as Cramton Rtp. [sic]].

"Of these illegal aliens, approximately 85 percent are citizens of Mexico. Cramton Rpt., at 6. They are industrious, proud and hard-working people who enter this country for the purpose of earning wages, accumulating savings, and

returning or sending their savings home to Mexico.

"Since 1970, the number of illegal Mexican aliens in the United States who have been apprehended has been growing at a rate in excess of 20 percent per year. Cramton Rpt., at 6.

"The increasingly large number of Mexican nationals seeking to illegally enter this country reflects the substantial unemployment and underemployment in Mexico--fueled by one of the highest birth rates in the world. Moreover, Mexican employment statistics are not likely to improve dramatically since fully 45 percent of Mexico's population is under 15 years of age and, therefore, will soon be attempting to enter the labor market.

"Further prompting Mexican nationals to seek employment in the United States is the fact that there is a significant disparity in wage rates between this country and Mexico. In Mexicali and Tijuana, both Mexican cities bordering the Southern District and each with a population in excess of 400,000, the average daily wage is about $3.40 per day. The minimum wage is even lower for workers in the interior of Mexico. The average worker in Mexico, assuming he can find work, earns in a day as much as he can make in only a few hours in the United States.

"In addition, it is estimated that the per capita income of the poorest 40 percent of the Mexican population, the strata most likely to leave their homeland in search of a better life in the United States, is less than $150 per year. * * * * *

"The opportunities available to Mexican aliens have traditionally been in agriculture. While still true in many parts of the United States Southwest, in recent years the pattern has changed and more and more illegal aliens are obtaining employment in service and manufacturing sectors of our economy. These aliens are increasingly found in virtually all regions of the country and in all segments of the economy. State Social Welfare Board, Issue: Aliens in California, 12 (1973) [Hereinafter cited as Aliens in California].

"The nature of the change in employment opportunities available is demonstrated by one estimate that 250,000 illegal aliens are employed in Los Angeles County where agricultural opportunities are known to be limited. Hearings on Illegal Aliens Before Subcomm. 1 of the House Comm. on the Judiciary, 92d Cong., 1st Sess. pt. 1, at 208 (1971) [Hereinafter cited as Hearings on Illegal Aliens].

"Other estimates of the impact of illegal aliens in California suggests that in 1971, when 595,000 Californians were unemployed (7.4 percent of the State's labor force), there were between 200,000 and 300,000 illegal aliens employed in California earning approximately $100 million in wages. Hearings on Illegal Aliens, at 150.

"Since the majority of Mexicans are unskilled or low skilled workers they tend to compete the Mexican-Americans, blacks, Indians, and other minority groups who, due to the declining percentage of jobs requiring low or no

skills, are finding it increasingly difficult to obtain gainful employment. Cramton Rpt., at 12.

"Illegal aliens compete for jobs with persons legally residing in the United States who are unskilled and uneducated and who form that very group which our society is trying to provide with a fair share of America's prosperity.

". . . . . .

"In some states illegal aliens abuse public assistance programs. In some instances entire families who entered the country illegally have been admitted to the welfare rolls. Aliens in California, at 35, 43.

"Another aspect of the problem created by illegal aliens is that employed aliens tend to send a substantial portion of their earnings to relatives or friends in Mexico. This outflow of United States dollars exacerbates our balance of payments problem to the extent of $1 billion a year. Hearings on Illegal Aliens, pt. 3, at 683. . . ."

The obvious catastrophic effect upon the economic well-being of California citizens by the tremendous influx of illegal aliens into California, as described above, if the appellant's position were sustained, as a practical matter could result in a raid and plunder of the unemployment insurance "bank" by illegal aliens, cheapen the rights enjoyed by United States citizens in general and California citizens in particular, demean those aliens lawfully within California, make a mockery of the federal immigration

scheme and undermine and leave in shambles both the federal and California unemployment insurance laws.

DISPOSITION

The judgment is affirmed.

CERTIFIED FOR PUBLICATION

HANSON, J.

I concur:

WOOD, P.J.

Noting a doubt because the issue which I view as dispositive of the case at bench is now pending before the United States Supreme Court on certiorari, I dissent from the majority opinion.

As I analyze the case at bench, the key to its resolution lies in Labor Code section 2805 enacted in 1971. That statute states in pertinent part: "No employer shall knowingly employ an alien who is not entitled to lawful residence in the United States if such employment would have an adverse effect on lawful resident workers." If Labor Code section 2805 satisfies constitutional requirements and is therefore effective as the law of California, the Board's requirement that an alien furnish indicia that he is lawfully in the country is a valid one. Ascertainment of the alien's legal status is reasonably required to determine a key fact bearing upon his employability as a matter of law and hence whether he is legally available for work within the meaning of Unemployment Insurance Code section 1253. If, however, section 2805 is constitutionally defective, then no law prohibits the employment of an alien illegally in the United States so that appellant must be deemed available for work in the week for which he applied for unemployment insurance benefits.

The California Court of Appeal has declared that Labor

Code section 2805 is an invalid invasion of a federally pre-empted area in Dolores Canning Co. v. Howard, 40 Cal.App.3d 673 [115 Cal.Rptr. 435], and DeCanas v. Bica, 40 Cal.App.3d 976 [115 Cal.Rptr. 444, hg. denied in Supreme Court October 24, 1974]. On June 24, 1975, the United States Supreme Court granted certiorari in DeCanas on the issue of federal preemption (43 U.S. Law Week 3669-3670). The key issue which controls the decision of the case at bench is thus currently in doubt.

Despite the grant of certiorari in DeCanas, the current law of California is as stated in that decision and Dolores Canning (Knauff v. Shaughnessy (S.D.N.Y. 1949) 88 F.Supp. 607, 608). The Court of Appeal opinions are persuasive expositions of the law. Until the United States Supreme Court acts, I view them as controlling.

I am left then with a situation in which the employment of illegal aliens is not prohibited. Since it is not, appellant satisfies the requirements for benefits stated in Unemployment Insurance Code section 1253. It is not appropriate that either the Board or this court rewrite those provisions to impose a requirement for benefits that the Legislature did not enact.

I am not persuaded by the majority's eloquent statement of the public policy underpinning of its opinion. The statement is persuasive that the Legislature should amend Unemployment

Insurance Code section 1235 to exclude illegal aliens from benefits but irrelevant to the construction of a statute absolutely clear on its face.

To the extent that the public policy argument of the majority opinion is construed as application of a state public policy, it suffers from a vital constitutional flaw if Dolores Canning and DeCanas are accepted as valid. Federal preemption applies just as much to judicial legislation by a state court as it does to law enacted by the legislative body of a state. If an area is federally preempted by the Constitution, a state public policy can no more justify a state decision resting on the local policy than can the same public policy justify a state legislative enactment.

To the extent that the public policy argument of the majority opinion is construed as a statement of federal public policy, it wrongly states it. The majority opinion rests upon a partial and consequently deceptive characterization of Public Law 283 of the 82d Congress (2d sess.) to state that there is a federal public policy against payment of unemployment insurance benefits to aliens not legally present in this country. Public Law 283 now incorporated in 8 U.S.C. section 1324, subdivision (a), states, in section 8, subdivision (4), that it is a felony to willfully or knowingly encourage or induce an

alien illegally to enter the United States. But that same section 8, subdivision (4), ends with the sentence: "Provided, however, that for the purposes of this section, employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring." (Emphasis in original.) Leaving aside the fact that Public Law 283 deals only with encouragement or aid to an alien to enter the United States illegally and not with what happens after he is here, the Congress has, in terms that allay all doubt, declared that employment of the illegal alien and practices normally incident to the employment are not contrary to federal public policy or law. The federal public policy condones and does not condemn the employment. (Dolores Canning Co. v. Howard, supra, 40 Cal.App.3d 673, 684; Cobos v. Mello-dy Ranch, 20 Cal.App.3d 947, 950-951 [98 Cal. Rptr. 131].) In view of that condonation of the employment of illegal aliens and of practices normally incident to it, I disagree with the majority's conclusion that the normally incidental practice of payment of unemployment insurance benefits when the alien's employment terminates is somehow contrary to federal public policy.

Appellant can be denied benefits only if we substitute a personal conception for what the law should be for the law and public policy as declared by the Legislature of California and

the Congress of the United States. Because I believe that it is our function to apply the law as given us by the appropriate legislative agencies whether we approve or disapprove of the result to which that takes us, I would reverse the judgment.

THOMPSON, J.

PROBLEMS OF PERSONS WITHOUT IMMIGRATION DOCUMENTS IN THE CENTRAL LOS ANGELES REGION

United Way-Region V
July 1975

Revised 7/28/75

APPENDIX C

United Way-Region V
Regional Planning Council Board

COMMITTEE ON PROBLEMS OF UNDOCUMENTED PERSONS

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United Way Regional Planning Council Board

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1.0 INTRODUCTION

Early in 1975 the United Way Central Los Angeles Region Planning Council Board instructed its staff to conduct a series of interviews in low income neighborhoods of the Region. The purpose of the interviews was to identify some key problem areas which might be amenable to planning and action by United Way. One of the problems most often mentioned was the large number of persons without immigration documents, or "illegal aliens" who face many serious problems.

In terms of human services planning this is a large population who, because of their legal status or because of fear, frequently do not receive services provided by public agencies.

The planning staff of Region V of United Way gathered information about the characteristics of undocumented persons as well as problems presented by this group in terms of human needs and public policy issues. This information was drawn from local and national publications, transcripts of legislative hearings, and from interviews with individuals in voluntary and governmental organizations that serve or are knowledgeable about undocumented persons.

The Honorable Edmund D. Edelman, member of the L. A. County Board of Supervisors, was asked to chair a Committee on Problems of Undocumented Persons, by Rabbi Alfred Wolf, Chairman of the Regional Planning Council Board. The purposes of the Committee were to review and augment the information that had been gathered about undocumented persons in Central Los Angeles, to assess the availability of services to meet emergency needs of this group, to examine major legislative proposals for dealing with problems of undocumented persons, and to recommend a program of action that would lead to improvements in the service-delivery system as well as possible legislative remedies.

In the course of the meetings of the Committee, all members were called upon to propose actions that, based on their experience, seemed needed to improve services and legislation. Two Sub-Committees, one on Services and one on Legislation, were established to discuss thoroughly all suggestions and to try to reduce proposals to those that seemed most practical.

The recommendations in the section of this report titled Action Proposals are the result of the deliberations of these Sub-Committees and final evaluation by the full Committee.

2.0. SOME HISTORICAL BACKGROUND

Since many undocumented persons in the Los Angeles area are Mexican nationals, any discussion concerning illegal immigration must consider the unique relationship that has existed between Mexico and the United States. First, the proximity of the two countries and the thousands of miles of border, resulting in relatively easy access, need to be acknowledged. Secondly, until the war between Mexico and the United States, which ended in the Treaty of Guadalupe-Hidalgo in 1848, California, as well as much of the rest of the southwestern United States, was Mexican territory. Consequently, there has been a tradition of free interchange back and forth across the border. Third, the difference in the respective levels of economic development of Mexico and the United States has made migration to the Los Angeles area an attractive option for many Mexican nationals.

There appears to be a historic pattern to the dominant attitudes and the policies of government officials towards immigration from Mexico (including "illegal immigration" in the period since restrictive immigration laws were instituted earlier this century). The pattern is such that in times of prosperity and labor shortage immigration is encouraged and "illegal immigration" is tolerated. However, in times of economic problems and high unemployment, attitudes shift towards discouraging immigration and there is pressure for governmental officials to take action.

Utilization of Mexican immigrant labor at low wages has long been practiced by American employers. In the period following the acquisition of the Southwest by the United States until the 1920's there was an open door to Mexican immigrants.

> Immigration was unobstructed and actually encouraged, as long as the young industries of the sparsely settled Southwest--agriculture, mining and the railroads - needed a plentiful supply of cheap labor. 1/

However, during the Great Depression, attitudes and policies were such that thousands of Mexican immigrant families were "encouraged to repatriate".

> A common method of encouraging repatriation was to threaten an end to relief assistance unless a family agreed to leave. Another was for an agency, like Los Angeles County, to pay train fare to the border for whole trainloads of Mexican-American families. Like refugees, Los Repatriados usually took with them only a few important belongings. They also took with them many children who were U.S. citizens. Estimates of the number of Mexican-Americans repatriated at that time range from 90,000 to 200,000. Estimates for California vary from 50,000 to 75,000 with half of them from the Los Angeles area.2/

The bracero program was instituted during war time out of concern for meeting the demand for agricultural labor in the southwestern U.S. The program provided for the temporary employment of non-immigrant aliens under conditions agreed to by the

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1/ Los Angeles Times, February 23, 1975, Part V, p. 5.

2/ Ibid.

United States and Mexican governments. Under this program, many Mexican farmworkers worked temporarily on farms in California and elsewhere in the southwest and returned to Mexico after completing their labor contracts. However, even during the bracero program illegal entry was common. In 1954 "Operation Wetback" was conceived as the Federal government's response to illegal immigration. In that year more than one million deportations took place as a result of the efforts of a "special mobile force" of 800 immigration officers who concentrated their efforts in Southern California and Texas.

The bracero program, until its termination in 1964, served to some extent as a "safety valve" for Mexico's unemployed. The end of the program in 1964 brought on a dramatic rise in the presence of undocumented persons in the Los Angeles area. Table 1 illustrates the increase in apprehensions of "deportable aliens" by the INS between 1968 and 1972. The number of apprehensions for 1974 was 788,000. 3/

Although the "illegal problem" has traditionlly been thought of as a rural problem, it is now very much an urban problem. This can be in part attributed to the shift in demand for low cost labor from the agricultural sector to the urban labor markets.

As concern over the nation's economic troubles and high unemployment increases, the pattern described above appears to be holding true. The pressure for governmental action to "deal with the problem" has been increasing. This is exemplified by a speech late last year in which then-Attorney General Saxbe advocated another round of massive deportations. 4/

This discussion of the historical background of the problem has focused on the majority of the undocumented population which is of Mexican origin. However, according to INS commissioner Leonard Chapman, hundreds of thousands of non-Mexican undocumented persons, from virtually all countries in the world are present in the United States. 5/ A large number of persons of Asian origin can be found in Los Angeles County since Southern California traditionally also has had a large Asian community.

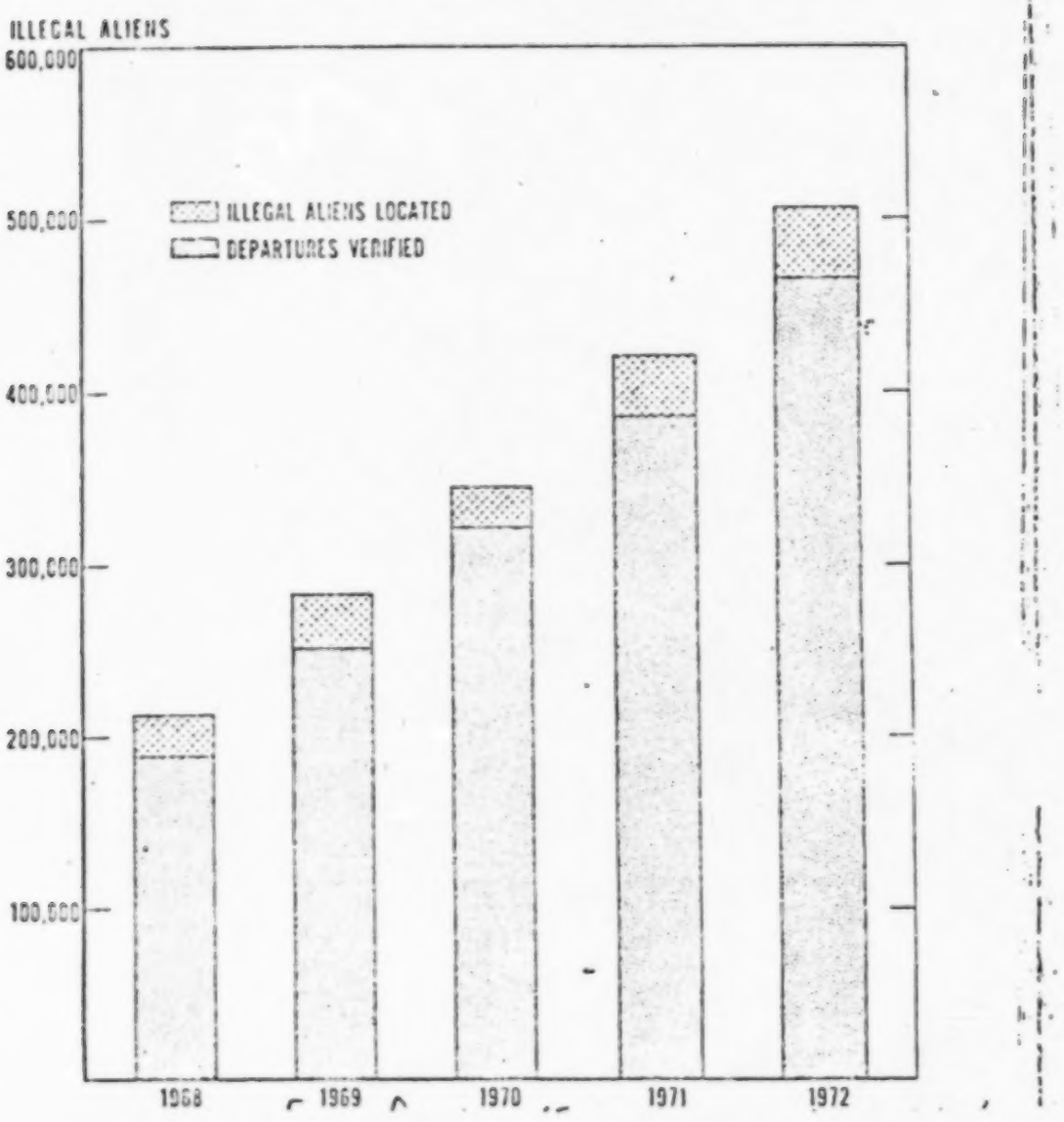
3/ Los Angeles Times, February 23, 1975, Part IV, p. 5.

4/ ZPG National Reporter, December, 1974, p. 3.

5/ Los Angeles Times, March 13, 1975, Part I, p. 9.

TABLE 1

ILLEGAL ALIENS LOCATED AND DEPARTED



(Source: U. S. General Accounting Office, More Needs to Be Done to Reduce the Number and Adverse Impact of Illegal Aliens in the U.S., Wash. D.C., 1973)

3.0. ESTIMATED SIZE OF THE POPULATION

An accurate count of the undocumented population does not exist. All that is available is a range of estimates (educated guesses) which people familiar with the problem have made recently. Estimates for Los Angeles County include:

1. 54,000 - 600,000; estimates used by the Los Angeles County Administrative Officer in a report prepared at the request of Supervisor Edelman (the CAO cited recent media reports as the source of these estimates).

2. 1,000,000 for the Southern half of California; 1/2 of these in Los Angeles and San Diego Counties; estimate of INS District Director Joe Sureck.

3. 300,000 - 700,000 for Los Angeles County; "Ballpark estimate" by Professor Joan Moore, USC Population Laboratory (telephone communication, August, 1974).

4. 350,000 - 400,000 for all of Southern California; 250,000 to 300,000 for Los Angeles County; Gary Manulkin, One-Stop Immigration Center (personal interview, April, 1975).

Although the impossibility of accurately estimating the undocumented population in Region V is fully recognized, a methodology was developed for arriving at a rough estimate. The methodology is based on the assumption that this population is made up almost entirely of Spanish-speaking persons and that it would tend to be distributed in a pattern similar to the "Spanish-American" population counted by Los Angeles in 1970. It is thought that because of the cultural and linguistic familiarity afforded by concentrations of Spanish surname population this assumption is valid. The ratio of the Spanish-American population of Region V to that of Los Angeles County, according to the 1970 census, was 38% (i.e., 492,218 or 38% of the County's 1,289,311 Spanish American residents resided in Region V in 1970). Applying the 38% ratio to a range of estimates for the undocumented population of L. A. County results in the following range of rough estimates for Region V:

Estimated Population of Undocumented Immigrants Los Angeles County	Portion Residing in Region V
100,000	38,000
300,000	114,000
500,000	190,000
700,000	266,000

If one assumes an undocumented population for Los Angeles County of 400,000 (a middle range of the estimates listed above), then the undocumented population of Region V would be approximately 150,000. It must be emphasized that this is not intended as an accurate estimate. Rather, it is intended to provide a rough feel for the magnitude for the problem in Region V.

Map 1 on the following page indicates the distribution, according to the 1970 census, of the foreign-born members of the Spanish-American and Asian populations (the latter derived using the "other" category in the census) who immigrated in the years 1960 to 1970. The map shows the region divided into 33 "community study areas" utilized by United Way for research and planning purposes. In addition, the location of Region V in relation to the rest of Los Angeles County is shown on the larger map (#2). This is the best readily available indication of the locational distribution of recently arrived Spanish-speaking and Asian immigrants. If one accepts the assumption that undocumented Spanish-speaking and Asian immigrants would tend to reside in the same communities as immigrant aliens and new citizens from the same countries of origin, then the maps can be seen as indicators (admittedly very rough) of the relative presence, by community study areas, of undocumented aliens. It must be emphasized that the value of the maps is they indicate which neighborhoods in Region V have relatively high concentrations of recent Spanish-speaking and Asian immigrants and, therefore, likely concentrations of undocumented aliens.

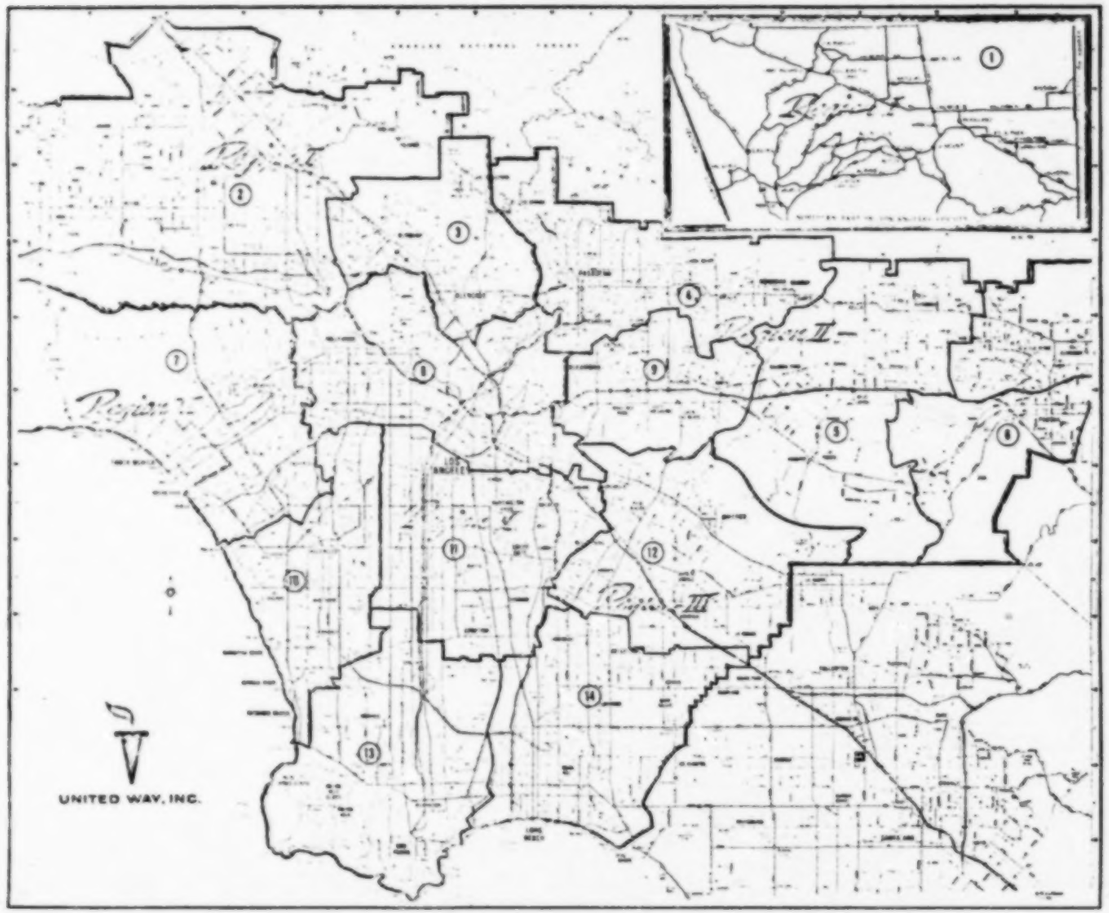
MAP 2

DISTRIBUTION OF FOREIGN-BORN SPANISH-AMERICAN AND "OTHER" (ASIAN) POPULATION WHO IMMIGRATED BETWEEN 1960-1970, BY REGION V STUDY AREAS.

(SOURCE: 1970 CENSUS)

KEY:

● = 1,000 SPAN.-AMER.
◗ = 500 SPAN.-AMER.
○ = 1,000 ASIAN
◗ = 500 ASIAN



MAP 2

4.0. CHARACTERISTICS OF THE POPULATION

According to a 1973 report to the Congress by the Comptroller General's Office -

> The Immigration and Nationality Act (8 U.S.C. 1101) contains the statutory provisions for entry and stay of aliens. Aliens are categorized by three broad groups: immigrants who seek permanent residence; non-immigrants who enter for temporary periods for such purposes as business, pleasure, schooling, or work; and aliens who enter illegally, such as those who sneak in, use fraudulent visas or documents, or make false claims to citizenship. Illegal aliens deportable under the Act include those who entered illegally and those who subsequently violated the conditions of their entry. Immigrants become deportable by certain actions or convictions as defined in the law. Non-immigrants become illegal aliens by overstaying their permitted time or taking unauthorized jobs. 6/

In the Los Angeles area it appears that many of the recently arrived undocumented aliens are Mexican nationals who either cross the border clandestinely (many with the help of smugglers who charge up to $300 and $400 per person), cross with falsified documents or enter with temporary visas and overstay the periods specified by their visas. The next largest group is made up of other Western Hemisphere nationals who either enter clandestinely through Mexico or directly from their country of origin with temporary visas and overstay the conditions of their visas.

There is also a smaller but still significant number of Asian undocumented aliens. In this case the pattern is one in which people come with temporary visas (mainly visitors and students, but also some crewmen) and stay on after their status has lapsed.

Detailed information on the characteristics of the population is not available at this time because of the unavailability of census data. A more detailed profile of the characteristics of the undocumented population will be available soon. As part of the Los Angeles County Bar Association's study on the legal problems of this population, a sample of the clients of the One-Stop Immigration Center is being analyzed in terms of its demographic characteristics. Preliminary data from this source are summarized in the appendix of this report.

6/ U.S. General Accounting Office; More Needs to be Done to Reduce the Numbers and Adverse Impact of Illegal Aliens in the U.S. (Washington, D.C.; Government Printing Office, 1973) p. 5.

In the minds of many people who are not familiar with the undocumented immigrant population, the image of the "typical" Latin American member of this population is that of a young man, either unmarried or with a wife and children left in his home town, who is here with the idea of working for a few months and returning home with some savings. This image is probably a hold over from the days of the bracero program.

It appears that in fact, most undocumented residents are here as part of family units, some having brought wives and children from their homeland and some having been married here (marriages of undocumented immigrant men to resident alien and U. S. citizen women are thought to be common by some persons knowledgeable about this population). In one group of undocumented aliens about which detailed information was available, it was found that in a majority of these families there were one or more children who were actually legal U. S. citizens. It was also found that a higher proportion of the population is made up of women than has been traditionally thought. Contrary to the view that undocumented persons typically remain in California a short time, it is the opinion of many persons familiar with this population that most come with the intention of remaining. Consequently, it is estimated that a majority of the undocumented population residing in the Los Angeles area has been in the country for more than three years.

There is strong evidence, based on a sample of undocumented aliens known to voluntary agencies and on recent testimony presented to the Los Angeles County Board of Supervisors, that a very small percentage of undocumented aliens actually seek or receive public welfare assistance. Out of 13,000 cases cleared by Los Angeles County Department of Public Social Services with the Immigration and Naturalization Service as of July, 1975, it was determined that 2 were illegal aliens, 1,000 were referred to Washington, D.C. for clearance because there was no record locally, and the rest were verified to be legal, documented residents.

5.0. LEGISLATIVE BACKGROUND & PENDING LEGISLATION

The existing Immigration and Nationality Act has been criticized on a number of counts. Since in general the main attraction for undocumented aliens is the possibility of employment, the lack of a means of deterring their employment has been much criticized, especially by organized labor. Another ground for criticism is the difference in the way the law treats Western Hemisphere immigrants as opposed to those from the Eastern Hemisphere. First, the annual quota for Eastern Hemisphere immigrants is 170,000 as opposed to 120,000 for the Western Hemisphere; secondly, the law permits Eastern Hemisphere aliens who wish to change their status to remain in the U. S. while doing so, while it requires Western Hemisphere aliens to return to their country of origin and apply through the U. S. Consulate. The latter is the cause of the separation of family units and of a great deal of hardship. An alien head of household may lose his job while waiting for an appointment with the consul. This forces his family in the U. S. to go on welfare. The Consulate may then reject the applicant since he has no firm job offer and his family has become a public charge. The alien is then forced to re-enter the U. S. illegally to support his family. 7/ Another set of problems has to do with issues such as the right to legal representation for aliens at deportation hearings and other issues of basic protection under the law. These and other related issues are being covered in a study now underway by the Los Angeles County Bar Association.

In the past five years a number of legislative remedies have been proposed. A good deal of the pressure for legislation has come from organized labor, which has expressed much concern about the impact of undocumented workers on U. S. unemployment, the alleged effect of depressing wage rates and the use of illegal aliens as strike breakers by employers.

In 1971 the Dixon Arnett bill was passed by the California Legislature and signed into law by Governor Reagan. The bill provided for fines and imprisonment of employers who knowingly employed "illegal aliens". The employer was to be held responsible for verifying the citizenship or immigration status of all prospective employees. In February, 1972, before the Act took effect it was declared unconstitutional. "There were two bases for the decision; the federal government had preempted the field of immigration and naturalization and, as an enactment with criminal sanctions, the act was too vague, indefinite and uncertain". 8/

On the federal level a great deal of legislation has been proposed - at least 20 bills aimed at some aspect of this problem have been introduced in the current Congress. Of these there are 3 major bills which deserve attention - the Rodino, Kennedy and Sisk bills, each of which will be discussed briefly here.

The Rodino bill proposes a similar concept to that of the Dixon Arnett bill, i.e., criminal sanctions for employers who knowingly hire illegal aliens. The bill was twice passed by the House of Representatives but has yet to be reported out by the Senate Judiciary Committee. The bill would put the burden for verifying a pro-

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7/ Los Angeles Times, January 23, 1973.

8/ Ibid.

spective employee's immigration status solely on the employer. The proposal has been criticized on similar grounds as the Dixon Arnett bill - the employer will be asked to do the job of the INS and, given the complexities of the Immigration and Nationality Act there is a good deal of margin for error; the bill would invite employers to "play it safe" and only hire persons who "look like citizens" - i.e., light-skinned people without accents.

> Because of this proposed mandate for differentiation in the treatment of actual or potential employees, there would be deprivation of equal protection of the law. Moreover, because the Rodino bill encourages employers to investigate into, and then discriminate between, employees on the basis of race or ethnic background, it obviously contravenes principles expounded in federal civil rights laws.9/

Partly as a result of these concerns, the Sub-Committee on Immigration and Naturalization of the House Judiciary Committee voted unanimously to allow illegal aliens, who have resided in this country since June 30, 1968, to legalize their immigration status by petitioning the Attorney General. This amnesty provision was offered as an amendment to the Rodino Bill.

The main feature of the Kennedy Bill is its provision for the change of status to permanent resident for undocumented aliens who have resided continuously in the U. S. for 3 years or more. Should this bill or a bill with a similar provision pass, it would result in a flood of people who would be eligible for amnesty needing legal counsel.

The Sisk Bill would require that specific alien and citizenship status information be provided prior to the issuance of a Social Security card. It would require that each card be unduplicatable and that it be presented to employers by all prospective employees. It calls for penalties for employers who hire persons without this card. The Bill thus offers an alternative to the concept of the Rodino Bill for dealing with the "magnet of employment" while avoiding the problems inherent in putting the burden on the employer for verifying status and thus the likelihood of discrimination against those who "look foreign."

2/ Ibid.

6.0. ISSUES RELATED TO HUMAN PROBLEMS OF UNDOCUMENTED ALIENS

6.1. Language Problems and Cultural Adjustments

Undocumented aliens share with all newly arrived residents from non-English speaking countries the problems of functioning in a new language and cultural environment. A recent report prepared by the Task Force on the non-English speaking for the Los Angeles County Commission on Human Relations discusses serious problems faced by the non-English speaking in the areas of service delivery, employment, acculturation, immigration and intergroup tension. The problems outlined in that report are of course experienced by the undocumented population and in fact are compounded greatly by fear of apprehension and by problems related to eligibility for publicly supported human services.

6.2. Exploitation by Employers

The willingness of U. S. employers to hire undocumented workers sometimes extends to recruitment of undocumented workers, including offers of employment extended through friends and relatives already in the U. S. to prospective employees in Mexico and other countries. According to testimony taken by the Sub-Committee on Immigration of the U. S. House of Representatives' Committee on the Judiciary, exploitation of undocumented workers is a common practice. Also, undocumented workers are not eligible for unemployment benefits nor disability insurance if they are laid off or unable to work due to illness or injury.

> "Because their presence in the U.S. is in violation of the law and they are in constant danger of discovery and deportation or, if they come in illegally, of fines and imprisonment, they are in no position to complain if their employer pays them poorly or treats them unfairly. As a result, their employment is characterized by substandard wages and denial of rights or benefits normally associated with employment in America." 10/

Although the use of undocumented labor by agricultural employers has long been practiced, the employment of members of this population in urban areas is now common. According to testimony taken by the California Assembly Committee on Labor Relations, employment of undocumented workers is very common in the following industries: Construction; hotels and restaurants, the garment industry and other small scale manufacturing, services (i.e., car washes) and employment as domestic help.

Two points of view were expressed in discussion of the Los Angeles situation. One stressed the need to prevent exploitation of undocumented persons and to enforce laws governing labor conditions. The other urged that recognition be given that not all employers are exploitative and that some try to help employees to legalize their status.

10/ Testimony of Andrew J. Biemiller, Director, Department of Legislation, AFL-CIO Hearings before Sub-Committee No. 1, Committee on the Judiciary, House of Representatives, on Illegal Aliens, p. 75.

6.3. Immigration Counseling

Many persons without documents have a tremendous need for legitimate, reasonably priced immigration counseling to assist them in meeting conditions for obtaining immigrant alien status.

According to a recent Los Angeles Times article on the subject -

> The Immigration and Nationality Act contains 192 separate sections of law and immigration and 100 on citizenship all with numerous subdivisions. In addition, any practitioner in the field must be familiar with the regulations and operating procedures of the U.S. State Department and many of its overseas consulates, the Department of Labor and the Justice Department's Immigration and Naturalization Service - all typical bureaucracies with unique quirks and wide discretionary authority. Even a well-educated alien can become lost in the maze of laws and regulations, so most seek out some kind of assistance when they attempt to legalize their status as immigrants. 11/

Due to the legal complexities and the fear of deportation, persons without documents are very vunerable to victimization by unscrupulous "immigration counselors." A common complaint is that such firms charge high fees for services which are of no use to the client when the client has no legal basis for adjusting his status.

There are some private non-profit agencies which are providing low cost or free of charge immigration counseling services. Some of those which are located in Region V are: Catholic Welfare Bureau, CASA, CSO, International Institute, Nationalities Service Center, Oriental Service Center, and One-Stop Immigration Center. However, one problem is that they are not able to reach all those who need the service because of their limited resources. Furthermore, only a few agencies have attorneys who are specialists in immigration law on their staff. There is a great need for providing immigration counseling by attorneys as well as by more social workers who are authorized to represent clients in immigration proceedings.

11/ Los Angeles Times, April 21, 1975, Part I, p. 14.

6.4. Lack of Accessibility to Publicly Supported Services

The question of services provided to undocumented residents by publicly supported agencies has received a great deal of attention. The issue is usually mentioned in the context of the cost to the taxpayer of services provided to members of this population. Fear of exposure to immigration authorities keeps most members of this population from seeking human services provided by publicly supported agencies and most undocumented persons will not seek health services unless a problem has reached crisis proportions. Regulations requiring that non-citizens who request public assistance sign a statement certifying that they are not under order of deportation represent another barrier. Prior to January of this year an alien could not receive assistance until the INS verified that person's status. A DPSS representative, Mr. David Fox, stated that between December, 1973 and January, 1975, 40,000 applicants for assistance had to file statements on their status. During the same period of time 2,284 alien applicants for public assistance refused to sign the statements. According to Mr. Fox, the backlog in INS's processing of these statements is approximately 34,000 referrals. A January, 1975 court decision in Sacramento (Varela vs. Swoop), ordered discontinuation of regulations developed to implement the 1971 Welfare Act. The court said the regulations had incorrectly interpreted the Act. Since that decision, assistance must be provided to applicants whose alien status is being varied by INS. Aid must be continued unless and until INS reports that an applicant is ineligible because of immigration status.

An additional factor which prevents undocumented aliens and immigrant aliens from requesting public assistance is the prohibition of change of status or attainment of citizenship by aliens who incur debts with public agencies. All the above factors work to make public assistance inaccessible to undocumented aliens. Although the January court decision makes it technically easier for undocumented persons to receive aid, the fear of exposure to immigration authorities remains as a powerful deterrent.

A special problem exists in the administration of the food stamps program. "Verification of citizenship or alien status is not required except in questionable cases." This section of the state and federal regulations (63-2208 and 732-1 2208) should be clarified for the eligibility workers who certify applicants for food stamps. The vagueness of terminology leaves great latitude for workers to exercise their own judgment which in many cases is colored by stereotypes of various ethnic groups. It is important to clarify in what specific situations an applicant should be required to provide evidence of status in order to ensure against discrimination.

Examples of situations in which aliens in need of financial assistance commonly find themselves include: 1) persons with immigrant alien status who are in the waiting period for obtaining citizenship and will not go to public agencies for assistance since they will jeopardize their chances; 2) Western Hemisphere aliens who return to their country to have their papers changed through the American Consulate may lose their jobs due to their absence and return to the Los Angeles area with no financial resources; 3) persons unable to work because of illness or injury but who are not eligible for disability insurance payments; 4) persons laid off due to the current economic crisis but are unable to collect unemployment benefits.

In light of the lack of accessibility to public assistance and the kinds of problem situations cited, undocumented aliens in dire financial straits are faced with the alternatives of requesting aid of friends and relatives (many of whom have few resources of their own) or requesting aid of clergymen and/or the few private organizations (mostly religiously affiliated) which provide emergency food, cash and shelter to those who need it.

However, the resources available to provide emergency assistance of this kind are not enough to meet the need.

Some attempt has been made to estimate the amount of public health and welfare services used by undocumented aliens as compared to the estimated taxes paid by this group. These estimates, which appear in the appendix of this report, suggest that this group contribute more in taxes than they receive in services. Furthermore, more recent hearings indicate that the numbers of undocumented persons assumed to be using public services in Los Angeles County have been overestimated and not borne out by clearances of names with the files of the Immigration and Naturalization Service.

7.0. ACTION PROPOSALS

The Committee on Undocumented Persons has reviewed those facts that are known about the undocumented alien population in Central Los Angeles, the human needs of this population, proposals made for extending services to meet crisis needs of these people, and legislative proposals that could lead to a long-term solution to an extremely complex problem.

The action proposals that follow are divided into two groups: those that could be implemented almost immediately through improvements in the services-delivery system and those that are long-range, requiring changes in the immigration laws and in State and Local governmental regulations affecting undocumented persons.

Short Term Proposals

1. There is a need to change federal and state regulations regarding eligibility for food stamps which prevent non-residents from receiving this assistance. There is also a need to change regulations regarding eligibility for general relief for the elderly which prevent undocumented elderly persons from receiving aid even though they may have resided and may have worked here for many years.

2. United Way funds should be distributed on the basis of basic human need regardless of the immigration status of service recipients. Private agencies offering emergency assistance to undocumented persons should be assisted.

3. Los Angeles County should allocate general revenue sharing monies to private agencies, especially since undocumented persons cannot go to public agencies for assistance.

4. There is a need to communicate effectively to the community that the County Dept. of Health Services and the County USC General Hospital do not report persons with immigration status problems. Private community agencies should make a concentrated effort to communicate this fact to the population.

5. There is a need to extend legally backed low cost immigration counseling to eligible persons who do not know how to legalize their status. The service should be made available in more locations, concentrating on areas which have significant populations of recently arrived Spanish-speaking and Asian immigrants. Training for para-professional immigration counselors should be provided to meet the staffing needs of this expansion of service. An effort should be made to establish cooperative relationships with non-exploitive employers who wish to help their employees adjust their status.

6. Army Reserve legal officers are a source of free legal advice to immigrants. A program to utilize this resource should be developed in cooperation with appropriate Army Reserve officials. This resource

should be made available on a permanent regular basis. Under the supervision of the Central Los Angeles Region Planning Council Board the Region V Planning Staff should contact Army Reserve officials and offer assistance in developing such a program.

7. The INS budget for fiscal 1975 gives priority to enforcement for the West Coast. More emphasis should be placed on services to people with immigration problems.

8. DPSS & the County Health Dept. should study & consider instructing eligibility workers to inform clients of the legal ramifications of receiving aid in terms of the "public charge" provision of the immigration and nationality act. This is important information for undocumented persons who may desire to change their status at some future date. This information should be provided both verbally and in writing. Eligibility workers should receive thorough training in applicable sections of immigration law and procedure in order that clients be provided with accurate information on this matter.

   In the event this is determined not to be legal or feasible, eligibility workers should have clear instructions, training, and procedures to refer clients to appropriate legal resources.

9. Recent immigrants and other aliens authorized to work should be employed in programs which provide services to the undocumented population.

10. There is a need for improved coordination among all involved institutions including appropriate Mexican government officials. Specifically, there should be coordination among INS, the Department of State (especially consulates at border cities in Mexico), private agencies that serve the undocumented population with immigration counseling, and Mexican government officials.

11. There is a need for innovative, broad-based programs for immigrants aimed at realizing the potential of immigrants as a valuable resource to the community. Services should be offered beyond assistance in changing status and an ongoing relationship should be maintained since the immigrant's problems are clearly not solved just by the fact that he has adjusted his status. Included should be orientation to the various complex institutions with which we constantly come in contact. The Puerto Rican government has done extensive work in the area of assisting Puerto Rican migrants in adjusting to life in the Mainland. This experience should be studied and similar assistance should be provided to immigrants in the Los Angeles area.

Long Range Proposals

1. There should be an extensive effort at compiling objective statistical data on the undocumented population in the Los Angeles area. The information developed through this effort should form the basis for a public information effort aimed at providing an accurate picture to the general public of the nature of the undocumented population and its alleged "impact on the taxpayer."

2. The Committee should advocate legislation which takes into consideration that most undocumented persons now living in the U. S. are productive individuals who, together with their families, are part of our community; and, which also provides for a sensible, non-discriminatory approach to controlling illegal

immigration in the future. This could best be accomplished by the passage of federal legislation which:

   a. Provides for amnesty and change of status for undocumented persons who have resided continuously in the U. S. for three years or more and who are not convicted felons. There should be a suspension of deportation and authorization to work for an individual who applies for the amnesty until a decision is reached on his or her petition.

   b. Required that specific alien and citizenship status information be provided by all applicants prior to the issuance of a social security card, that social security cards which cannot be duplicated (using a magnetic imprint) be issued, that these cards be presented to employers by prospective employees before obtaining employment, and that provides for criminal penalties for employers who hire employees not possessing a social security card which indicates that they are of a status which allows for accepting employment. (Introduced to the 95th Congress as H.R. 3737 by Congressman Bernie Sisk.)

3. The immigration and nationality act should be amended to permit Western Hemisphere aliens to adjust their residence status while remaining in the U. S., as is now possible for aliens from the Eastern Hemisphere.

4. Refugees admitted as permanent residents should not be charged to Hemisphere quotas.

5. Legislation should be enacted to regulate the functioning of notaries and other private firms who offer immigration counseling for fees. Included should be a provision which substitutes the term "official witness to signatures" for the term notary as a safe guard against exploitation of Spanish-speaking immigrants who associate the term notario with the legal profession and political influence.

6. The State Education code should be amended to delete the requirement that the names of undocumented students be reported by school districts (ultimately to the INS) in order that the district receive county funds (nearly $700 per pupil per year) to meet the special needs of these pupils.

7. There is a need to develop safeguards against selective enforcement of immigration laws.

8. There is a need to develop safeguards against discrimination in employment against "alien-looking persons."

9. Title VII of the federal Civil Rights Act applies to resident aliens and information should be distributed to resident aliens so that they are aware of these rights.

10. Responsibility for determining legal status of undocumented persons should be the sole responsibility of staff of the Immigration and Naturalization Service and the Social Security Administration. Local health, education, and social service agencies should not be required to report clients to the Immigration and Naturalization Service since this would interfere with the delivery of essential human services.

The program of action proposed by the Committee on Problems of Undocumented Persons is the result of a careful assessment of human and legal issues by people who work with different aspects of the problems presented by this group in Central Los Angeles. This program points the way toward lending assistance to undocumented persons within the framework of law and in ways that respect the human rights of citizens and non-citizens.

8.0. APPENDIX

A Sampling of Undocumented Persons Known to One-Stop Immigration Center in 1973

In 1973 questionnaires were filled out on a group of 1,258 undocumented persons of Mexican origin who sought assistance from the One-Stop Immigration Center in Los Angeles in connection with immigration problems. Although it cannot be determined whether this group is typical or atypical of undocumented persons in general, the information obtained is different from the stereotype of the undocumented alien. It suggests the need to look at each person and each problem on an individual basis. Some of the characteristics of these 1,258 undocumented persons follow:

Sex	No.	Percent
Male	789	62.7
Female	463	36.8
Not reported	6	.5
	1,258	100.0

Marital Status	No.	Percent
Married	803	64.2
Single	321	25.5
Widowed	27	2.1
Divorced	22	1.7
Separated	31	2.5
Unwed mother	17	1.4
Not reported	32	2.6
	1,258	100.0

Children with Legal Status

Number of Children	Children Have Legal Status	
	Cases	Percent
1	484	38.5
2	158	12.6
3	41	3.3
4	21	1.7
5 or more	23	1.8
None	196	15.6
Not reported	335	26.5
	1,258	100.0

Number in Household Who Were Employed

	No.	Percent
1	817	64.9
2	170	13.5
3 or more	24	1.9
None	156	12.4
Not reported	91	7.3
	1,258	100.0

Total Family Income

	No.	Percent
Under $4,000	325	25.9
$4,000 to $8,000	520	41.3
$8,000 to 12,000	129	10.3
$12,000 and over	29	2.3
Not reported	255	20.2
	1,258	100.0

When Last Entered United States

	No.	Percent
This year (1973)	41	3.3
1972	257	20.4
1971	215	17.1
1970	163	13.0
1969	122	9.7
1968	102	8.1
1967	72	5.7
1966	37	2.9
1965	31	2.5
1964 or before	120	9.6
Not reported	98	7.7
	1,258	100.0

Fluency in English	No.	Percent
No English	511	40.6
Poor	484	38.5
Fair	175	13.9
Fluent	62	4.9
Not reported	26	2.1
	1,258	100.0

Received Welfare	No.	Percent
Presently receiving welfare	101	8.0
Previously received welfare	60	4.8
Never received welfare	531	42.2
Not reported	566	45.0
	1,258	100.0

Type of Assistance Requested

	No.	Percent
Immigration	1,074	85.4
Housing	8	.6
Employment	14	1.1
Citizenship	7	.6
Medical	2	.2
Legal	12	1.0
Education	5	.4
Family relations	5	.4
Not reported	131	10.3
	1,258	100.0

Source of Previous Service in Connection with Immigration Problem

	No.	Percent
Attorney	52	4.1
Notario	114	9.1
Non-profit social agency	44	3.5
Other	80	6.4
Not reported	968	76.9
	1,258	100.0

Tax Contribution of Undocumented Aliens

It is frequently argued by those pressing for tighter immigration controls that undocumented immigrants represent a large net loss to the tax payer due to their "consumption of costly, publicly-supported human services". The Los Angeles County Chief Administrative Officer recently prepared, at the request of Supervisor Edelman, an estimate of the cost to the County of services provided to undocumented residents by County agencies. The cost estimates were based on reports made by the County's Health Department and DPSS. The tax estimates were based on a range of population estimates made in recent news articles and taking into consideration the principal types of direct taxes paid by consumers. The CAO's report, as all other reports of this nature, is based on unverified data. The report states "because of the unreliability of data related to illegal aliens, such estimates can only be considered the grossest possible measure of their possible support to government". 12/ However, if the estimates suffer the same weaknesses as other reports of this nature, it is also as good as any other estimate available.

The results of the tax estimate for the population range is shown in table 2. The estimated cost to the County are $8.2 million for health services and $1.3 million for DPSS (of which all but approximately $205,000 was reimbursable by the State and Federal Governments). The tax contribution of the undocumented population was estimated by assuming a low income "tax payer profile", described at the top of the table. The average amounts paid in various tax categories for that income group were then applied over a range of population estimates. As can be seen from the table the total taxes paid by the undocumented population at the lowest population estimate is nearly $15.5 million - compared to $9.5 million of estimated cost to the tax payer for health and welfare services to undocumented aliens. The middle population estimate produces a total taxes paid of more than $84 million while the highest population estimate results in total taxes paid of $172 million.

More recent hearings suggest that the numbers of persons assumed to be illegal aliens receiving public health and welfare services has been greatly overestimated and not substantiated by clearances with the files of the Immigration and Naturalization Service.

12/ L. A. County CAO, Tax Effort & Service Cost of Illegal Aliens, 3/20/75, p. 2.

TABLE 2

ESTIMATED TAX CONTRIBUTIONS BY "ILLEGAL ALIENS"

Taxpayer Profile:	Single; earning $2 per hour and working 40 hours per week; living in rented housing and pays rent commensurate with the General Relief rent allowance; as an inner city dweller, drives about 7,000 miles per year; pays income, sales, and gasoline taxes based on IRS allowable deductions.		
Estimated Population:	54,000 (Based on L.A. Times, Aug. 1974)	135,000 (Based on L.A. Times, Oct. 1974)	600,000 (Based on NBC News, Mar. 1975)
Employment Level: (46% of County population is considered as the work force; 135,000 estimate was an "employed" estimate)	24,840	135,000	276,000
Total Estimated Annual Income for Employed Aliens:	$103,334,400	$561,600,000	$1,148,160,000
Estimated Taxes Paid:			
--Federal Income (standard deduction) at $334 per person	$ 8,297,000	$ 45,090,000	$ 92,184,000
--State Income (standard deduction) at $19 per person	472,000	2,565,000	5,244,000
--State & Local Sales (IRS allowance) at $77 per person	1,913,000	10,395,000	21,252,000
--Gasoline-State & Federal (IRS allowance) at $55 per person	1,366,000	7,425,000	15,180,000
--Property Taxes (all jurisdictions) estimated at 20% of $68 per month rent and $25 renter tax credit per employed person	3,428,000	18,630,000	38,088,000
Total Taxes Paid	$ 15,476,000	$ 84,105,000	$ 171,948,000
County General Fund Property Taxes-31% of total property taxes	$ 1,062,280	$ 5,775,300	$ 11,807,280

IN THE

Supreme Court of the United States

October Term, 1975
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JULIO ALONSO,

Petitioner and Appellant,

vs.

STATE OF CALIFORNIA, DEPARMENT OF HUMAN RESOURCES AND STATE OF CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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SUBJECT INDEX

TABLE OF AUTHORITIES CITED

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BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

Respondents California Department of Human Resources Development (now the Employment Development Department) and the California Unemployment Insurance Appeals Board file this brief in opposition to the Petition for Writ of Certiorari filed in this Court on December 22, 1975, and respectfully pray that the Court deny the petition.

Introduction

The opinion of the California Court of Appeal, attached to the Petition for Writ of Certiorari as Appendix B, adequately sets forth the factual and

procedural matters which have transpired. It should be observed, however, that petitioner is incorrect in stating that he was held to be unavailable for work "solely on the basis of his refusal to show his 'immigration card. . . .'" (Petn., p. 5.) The Court of Appeal correctly noted that petitioner admitted that he was an alien but refused to state that his entry was legal or present *any* documentary evidence regarding his status. (Appendix B, pp. 3, 12-13.) At the administrative hearing it was established that petitioner refused to present "any kind of proof" that the Immigration and Naturalization Service was aware that he was in the United States.

Issue

Does the Department of Employment Development violate any constitutional or statutory provisions by insisting that applicants for unemployment insurance benefits who are not United States citizens furnish evidence that the Immigration and Naturalization Service is aware of their presence in the United States in order to establish their availability for work under California law?

WHY THE COURT OF APPEAL WAS CORRECT

1. Petitioner Was Not Available for Work

All applicants for unemployment insurance benefits are asked by the Department of Employment Development (hereafter Department) if they are citizens of the United States. If an applicant responds that he is not, he is requested to present proof that the United States Immigration and Naturalization Service (hereafter INS) is aware of his presence in the country. The respondent Department's procedure in this regard is set forth in its Local Office Manual which governs local office policy and is designed to give effect to federal statutes and regulations.

Petitioner incorrectly asserts that California law denying unemployment insurance benefits to persons who admit to the Department that they are not citizens but refuse to present documentary evidence that the INS is aware of their presence in the United States intrudes into a federally preempted field.

There is no question but that immigration and the regulation of aliens, both legal and illegal, is predominantly a federal concern, and this was recognized in the opinion of the Court of Appeal. (Appendix B, p. 7.) The Department and the California Unemployment Insurance Appeals Board (hereafter Board) have no intention of interfering with federal action or policy in this area, and have not done so in the instant matter.

The case at bar simply involves an interpretation of California Unemployment Insurance Code section 1253, subdivision (c), which provides that:

> "An unemployed individual is eligible to receive unemployment compensation benefits with respect to any week only if the director finds that:
>
> ". . .
>
> "(c) He was able to work and available for work for that week."

The Board and the California courts have interpreted "available for work" as more than a "mental and emotional willingness to accept suitable employment." (Petn. for Cert., p. 11.) Availability requires physical ability to report to work. For instance in Board Decision No. P-B 32 the Board held that a claimant who was required to be in court during his normal workweek was ineligible for unemployment benefits because he was not available for work on the days he was in court. The Board also has held that a claimant, attending school during one or more days of his workweek, visiting relatives, travelling, or attending a sporting event, was unavailable for work during that time and thus ineligible for benefits for the week.

Likewise, one who is not legally in this country cannot legally be qualified to work here. This conclusion is supported by reference to governing federal statutes.

The Board has observed that when considering the question of availability for work the public policy of the United States must also be considered. The Board has held:

> "It would be an absurd consequence for the Department of Human Resources Development of the State of California to assist a person, an illegal entrant, seeking advantages that, in our opinion, are available only to citizens and others who are lawfully admitted to our country. Denied unemployment benefits, he will not be as likely to succeed in maintaining himself and accomplishing his cheat upon the government." (Appendix B, p. 15.)

Obviously, if the claimant is not legally entitled to work in this country, he is not "available for work" within the meaning of the statute. Closely related to this requirement is the requirement set forth in Unemployment Insurance Code section 1253(b) that the claimant "has registered for work, and thereafter continued to report, at a public employment office. . . ." Once again, the illegal alien who is not legally qualified to work cannot register at a public employment office. Hence, the alien who is in the United States illegally is disqualified by sections 1253(b) and 1253(c).

California Unemployment Insurance Code section 100 provides that one of the purposes of providing unemployment insurance benefits is to reduce involuntary unemployment to a minimum. The payment of unemployment insurance benefits to illegal aliens would subvert this purpose by encouraging their presence in California and cause them to compete for jobs with citizens and lawful resident aliens.

California law is fully compatible with federal law regarding aliens and unemployment insurance benefits.

2. The Procedure Is Necessary to Establish Federal-State Conformity in Its Unemployment Insurance Laws and Federal Laws Regulating Aliens

One of the federal statutes which applies to the states in the area of unemployment insurance is the Wagner-Peyser Act (29 U.S.C. §§ 49-49(k)). That act states in section 3:

> "(a) It shall be the province and duty of the bureau to promote and develop a national system of employment offices for men, women, and juniors who are *legally qualified* to engage in gainful occupations, . . . to assist in establishing and maintaining systems of public employment offices. . . ." (Emphasis added.)

The regulations make clear that this statute is only meant to apply to those who are *legally qualified* to work. For example, at 20 C.F.R. § 604.1, it is stated that the policy of the United States Employment Service is:

> "(a) To accept an application from any applicant, *legally qualified to work*, without regard to his place of residence, current employment status, or occupational qualifications." (Emphasis added.)

Before federal funds under the act are made available to the states, it must be clear that the state is complying with the federal law. California has enacted the necessary statutes to indicate its acceptance of the Wagner-Peyser Act. This acceptance is explicitly set forth in Unemployment Insurance Code section 2051. Unemployment Insurance Code section 2052 provides that the director of the Department:

> ". . . may do and perform all things necessary to secure to this state the benefits of that Act in the promotion and maintenance of a system of public employment offices."

The procedures taken by the Department were eminently suited in making the determination necessary for the state to continue its eligibility for federal funds under the Wagner-Peyser Act. The statute and the federal regulations require that the individual must be legally qualified to work. It is therefore perfectly reasonable for a state to inquire of claimants for unemployment insurance compensation whether they are legally qualified to work. The corollary follows that if California wishes to qualify for funds under the federal act, it must take positive steps to assure that persons claiming benefits fulfill the requirements of the Wagner-Peyser Act. The least burdensome way to do this is simply to ask a claimant to show that he has informed the INS of his presence. This petitioner refused to do.

Additionally, California has an obligation not to subvert the federal statutory scheme which controls the presence of aliens and immigrants in this country. This scheme is codified in Title 8 of the United States Code. That title prescribes detailed procedures to which aliens and immigrants are subject. It imposes registration requirements on aliens, it subjects them to physical examination and fingerprinting, and it controls the circumstances under which they can work in this country. Among other things, Congress has shown concern that jobs which might otherwise be available to aliens lawfully residing here and to American citizens might be taken by persons coming into this country unlawfully.

For that reason, aliens are often required to obtain a certification from the United States Attorney General that they may lawfully engage in their particular work or occupation. *See* 8 U.S.C. § 1182(a)(14) (1964) Ed. Supp. V).

It is the duty of California to do everything it can to implement the purpose of the federal law. Were the state to pay unemployment insurance benefits to aliens who are illegally in this country and who have not been certified for work, either through work permits or otherwise, the state would be subverting the federal scheme and would be subsidizing persons who are performing illegal acts. Clearly California has a duty not to undermine the alien registration law or to compromise the intent of Congress that jobs be first available to American citizens and aliens lawfully residing here and entitled to work.

3. The Procedure by Which Petitioner Was Determined to Be Unavailable for Work Does Not Violate Due Process of Law

The requirement that an alien present proof that the INS is aware of his presence in this country does not violate due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution. This Court has not expressly addressed itself to the question of whether an illegal alien can rightfully invoke the due process clause of the Constitution; however, at least as to admission/exclusion cases the state may not disregard the fundamental principles that inhere in due process of law. *Yamataya v. Fisher*, 189 U.S. 86, 100, 23 S.Ct. 611, 614 (1903). Even if an illegal alien could invoke the due process clause, petitioner's contention is without merit.

The very reason the alien is required to present proof that the INS is aware of his presence is to determine the alien's right to unemployment insurance benefits under both federal and state law and therefore bears a rational relationship to the program. Since an illegal alien has no right to unemployment insurance benefits, the denial of benefits to such persons who fail to present proof that the INS is aware of their presence in order to perpetrate their clandestine existence does not deprive them of any right protected by the due process clause of the Constitution.

It has never been held by the courts that it is a denial of due process to require a claimant to show his entitlement to benefits by, for example, making a statement of availability for work or a statement that he has not received wages on the basis that such a requirement bears no rational relationship to the program of unemployment insurance.

In *People v. Mendoza*, 251 Cal.App.2d 835, 840 (1967), the court stated:

> "It is not a violation of the privilege against self-incrimination that administrative officials and peace officers are authorized by certain statutes to require evidence of identity or a statement of identity.
>
> "The use of identification cards for aliens . . . is contemplated by the rules of the Immigration and Naturalization Service (Ex parte Kojiro Sugimori, 58 F. 2d 782). Such cards as evidence of identity and status may be compared to licenses issued to operators of motor vehicles."

In the present situation, petitioner could not claim he did not have to give his name to claim benefits

and this alone would enable the Department to determine if the INS was aware of his presence. The Department's requirement that aliens present proof that the INS is aware of their presence merely permits the Department to expedite determinations as to the aliens' right to claim unemployment insurance benefits and again bears a rational relationship to the purpose of the unemployment insurance program.

4. There Is No Problem of Preemption

In examining the merits of any preemption problem, the court must analyze what is being regulated, by whom, for what purpose, and the statutory language and statutory intent. *Baltimore Shippers v. P.U.C. of Cal.*, 368 F.Supp. 836 (N.D. Cal. 1967). Measured by these criteria, it becomes obvious no preemption problem exists here.

It seems clear that the federal government has established a comprehensive scheme of legislation dealing with aliens and respondents have no quarrel with the contention that the federal government has preempted the field. *See Hines v. Davidowitz*, 312 U.S. 52 (1941). But petitioner has simply missed the point in arguing that California has purported to act in conflict with the federal statutes. The fact is that California has made no attempt to enact legislation dealing with aliens and covering such matters as registration, conditions under which aliens may lawfully reside in this country and deportation. In this area, the State has deferred to the federal government in accordance with the Supremacy Clause of the U.S. Constitution.

It cannot seriously be argued that California's efforts to implement the federal law and its attempt to comply

with the Wagner-Peyser Act as well is in derogation of or frustrates the federal legislation. *See Fitzgerald v. Catherwood*, 388 F.2d 400 (2d Cir. 1968), *cert. denied*, 391 U.S. 934.

A problem of preemption would be presented if California, for example, had its own registration forms for aliens, *cf. Hines v. Davidowitz, supra*, or established its own quotas for admission of aliens. But the state does none of these things. It simply asks, for the reasons set forth earlier, that the alien produce evidence that the INS knows he is in the country. The purpose is not to regulate an area controlled by federal law but merely to establish eligibility for unemployment insurance benefits.

Petitioner's citations to *Dolores Canning Co. Inc. v. Milias*, 40 Cal.App.3d 673 (1974) and *De Canas v. Bica*, 40 Cal.App.3d 976, *cert. granted*, 421 U.S. 987 (1975), are not supportive of his contentions. In those cases the court held that the federal government has exclusive jurisdiction in respect to illegal alien workers, to the exclusion of the states, and that a state law which attempts to regulate in that area is invalid. For state law to make illegal aliens eligible for unemployment insurance benefits, therefore, would be an invalid attempt to invade an exclusively federal area. For an intermediate point of view, that the states retain jurisdiction to regulate employment of illegal aliens, see 13 San Diego Law Review, "The Doctrine of Preemption and the Illegal Alien: A Case for State Regulation and a Uniform Preemption Theory," 166, 173 (1975).

Conclusion

Respondents' interest in determining resident status is aimed only at ascertaining the eligibility of a claimant for unemployment insurance benefits. It does this by determining whether the claimant is available for work and whether he is legally qualified to work and therefore able to register for work with a public employment office. This does not deny equal protection, deny due process or interfere with any federal law.

For the foregoing reasons the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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